THE LAW

RELATING TO

RAILWAYS

AND

Railway Companies;

WITH

ALL THE CASES RELATING TO COMPENSATION, MANDAMUS, INJUNCTION,

AND OTHER MATTERS

Decided in the Courts of Law and Equity;

INCLUDING THE DECISIONS AS TO THE LIABILITIES OF PROMOTERS AND PROVISIONAL COMMITTEE-MEN,

AND ON THE

RATEABILITY OF RAILWAYS TO THE POOR'S RATE.

ALSO THE PRACTICE IN PARLIAMENT, STANDING ORDERS, &c.

THE APPENDIX CONTAINS

All the Statutes, Forms of Notices, Warrants, Inquisitions, Awards, &c.; with Precedents of Pleadings, Deeds, &c.

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OF THE INNER TEMPLE, BARRISTER-AT-LAW.
RECORDER OF POOLE.

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As soon as the Bill introduced into Parliament, on the 12th of February, by Mr. Strutt, "for Regulating the Proceedings of the Commissioners of Railways, and for Amending the Law relating to Railways," has received the sanction of the Legislature, a SUPPLEMENT to this Work will be immediately published, whereby the mode of conducting the preliminary proceedings in Railway Bills to be introduced during the next session of Parliament will be pointed out, and also any additional provisions or alterations in the law, falling under the heads contained in Secs. 3 & 7, Chap. I. In other respects, the proposed measure will not affect the law as stated in this Work.

W. H.

TEMPLE.
Feb. 20th, 1847.

This Work

IS RESPECTFULLY DEDICATED

TO

THE RIGHT HONORABLE EDWARD STRUTT, M.P.,

PRESIDENT

OF THE BOARD OF COMMISSIONERS

FOR RAILWAYS.

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THE LAW

OF

RAILWAYS

AND

RAILWAY COMPANIES.

CHAPTER I.

THE STATUTE LAW APPLICABLE TO RAILWAYS, INCLUDING MATTERS OF PARLIAMENTARY REGULATION.

§ 1.—ON THE FORMATION OF RAILWAY COMPANIES.

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2. *Mode of obtaining a Certificate of Provisional Registration* . 4
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1. *Introductory Remarks.*

SINCE successful railway enterprise has induced the capitalists of this kingdom to embark an almost incredible amount of money in forming these great national works, the Legislature has not permitted a subject so deeply important to public and private interests to escape its observation, and therefore railway legislation now attracts no small share of attention in Parliament. It is the object of this chapter to present to the reader, in a concise form, the whole of the statute law applicable to railways in ge-

neral, and all parliamentary regulations having reference to railway legislation.

When it is intended to apply to Parliament for a railway act, the promoters of the scheme cause two provisional deeds to be prepared,—the one called *The Parliamentary Subscription Contract*, required by the Standing Orders in Parliament (*a*); the other, *The Subscribers' Agreement* (*b*). By the former of these deeds, the contracting parties undertake to subscribe a certain specified amount of money towards the costs of the undertaking, and by the latter the rules and regulations for the guidance of the directors or provisional committee, whilst the bill is pending in Parliament, are provided. Until a very recent period, the parties who were thus entrusted with the management of the undertaking exercised their own discretion, subject to the terms of the agreement, in proceeding to carry out the objects in view. Prospectuses were issued—deposits or subscriptions received—certificates of shares issued—and contracts made with landowners and others, subject to no control which the Legislature could exercise.

The law is now altered on this subject; for it is required by the Joint-stock Companies Registration Act (*c*), that a railway company, formed after 1st November, 1844 (*d*),

(*a*) See the form, post, Appendix, 254. As to the requisites of this contract, see Lords' Standing Ord., No. 224; post, 64; Commons' Standing Ord., No. 47, post, 40.

(*b*) See the form, post, Appendix, 249.

(*c*) 7 & 8 Vict. c. 110. See this statute, post, Appendix, 37.

(*d*) Sect. 2, post, Appendix, 38. In *Shaw* v. *Holland*, 15 M. & W. 136; 15 Law J., N. S., Exch., 87, where a company was incorporated by an act of Parliament previously to the 1st November, 1844, and they afterwards raised additional capital under a new subscription contract, for the purpose of applying to Parliament to form an extension line of railway, to be called "The Shipley and Colne Railway," and there were some shareholders in that railway who had no interest in the original line, it was decided, that the shareholders in the Shipley and Colne Railway were not a company, the formation of which

and a document, called a certificate of provisional registration, is issued when this registration is thus effected.

It is of essential importance that this registration should take place, for it is enacted, that, if, before a certificate of provisional registration be obtained, the promoters of a company, or any person employed under them, take any money in consideration of the allotment of shares, or of any interest in the concern, or by way of deposit for shares to be allotted or granted, or issue any note or scrip, or letter of allotment, or other writing to denote a right or claim, or preference or promise, absolute or conditional, to any shares, or advertise the existence or proposed formation of the company, or make any contract whatsoever for, or in the name, or on behalf of such intended company, every such person is liable to forfeit for every offence £25 (*g*).

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2. *Mode of obtaining a Certificate of provisional Registration.*

7 & 8 Vict. c. 110. On this subject, the statute provides (*h*), that, before proceeding to make public, whether by way of prospectus, hand-bill, or advertisement, any intention or proposal to form a company, the promoters thereof are to make to the office for the registration of joint-stock companies returns of the following particulars, according to a schedule annexed to the statute (*i*); that is to say—

1. The proposed name of the intended company.
2. The business or purpose of the company.

appoint a registrar, assistant-registrar, and other officers, and may make rules for the regulation of the office. (7 & 8 Vict. c. 110, s. 19, post, Appendix, 46). See the notices, &c. issued, post, Appendix, 234.

(*g*) Sect. 24, post, Appendix, 49.

(*h*) Sect. 4, post, Appendix, 40.

(*i*) Certain forms of returns having reference to provisional registration have been published by the Registrar of Joint-stock Companies, and they will be found in the Appendix to this work, 234.

8. A copy of every prospectus, or circular, or hand-bill, or advertisement, or other such document, at any time addressed to the public, or to the subscribers, or others, relative to the formation or modification of such company (*q*), which must be sent before it shall be circulated or issued to the public.

9. And afterwards, from time to time, until the complete registration of such company, a return of a copy of every addition to, or change made in, any of the above particulars.

And that, upon such registration of, at the least, the three particulars first before mentioned, the promoters of such company shall be entitled to a certificate *of provisional registration.*

If the above particulars are not registered within one month after they shall have been ascertained or determined, the promoters of the company are liable to pay a penalty of £20 (*r*). But if the promoters appoint a person, being an attorney or solicitor, to be a solicitor for them, and return to the Registry Office a duplicate of such appointment in writing, signed by some one or more of such promoters, together with a duplicate of the acceptance of such appointment, signed by the person appointed (*s*), then, until a duplicate of the revocation (*t*) or of the resignation of such appointment be returned in like manner, signed as aforesaid (*u*), or until the decease of such solicitor, all returns required to be made by such promoters shall be made by such solicitor in their behalf, and the penalty shall not be incurred by them; and if, within one month after the particulars

(*q*) See the form, post, Appendix, 240, (Form G., No. 8).

(*r*) Sect. 5, post, Appendix, 41.

(*s*) See the form of appointment and acceptance, (Form H., No. 9), post, Appendix, 241.

(*t*) See the form of revocation, (Form I., No. 10), post, Appendix, 242.

(*u*) See the form of resignation, (Form K., No. 11), post, Appendix, 242.

To assume the name of the intended company, but coupled with the words "registered provisionally."

To open subscription lists.

To allot shares, and receive deposits by way of earnest thereon, at a rate not exceeding 10*s.* for every £100 on the amount of every share in the capital of the intended company; and also, such further sum per £100 on the amount of every such share as may be required by the Standing Orders of either House of Parliament (*x*) to be deposited before the obtaining of an act of Parliament for enabling the company to execute such work.

To perform such other acts only as are necessary for constituting the company, or for obtaining an act of Parliament:

But not to make calls, nor to purchase, contract for, or hold lands; nor to enter into contracts for any services, or for the execution of any works, or for the supply of any stores, except such services and stores, or other things, as are necessarily required for the establishing of the company; and except any purchase, or other contract, to be made conditional on the completion of the company, and to take effect after the certificate of complete registration or act of Parliament shall have been obtained, and except contracts for services in making surveys, and performing all other acts necessary for obtaining an act of incorporation, or other act for enabling the company to execute their works (*y*).

By another section, it is declared to be unlawful for any joint-stock company to act otherwise than provisionally, in accordance with the act, until a certificate of complete registration has been obtained (*z*).

(*x*) See Lords' Standing Ord.,No. 224, post 66; Commons' Standing Ord., No. 46, post 39.

(*y*) Sect. 23, post, Appendix, 48.

(*z*) Sect. 7, post, Appendix, 41.

4. Mode of obtaining a Certificate of Complete Registration.

A railway company is entitled to receive a certificate of complete registration, on depositing at the proper offices of the two Houses of Parliament, in compliance with the Standing Orders of such Houses respectively, and at or within the time required by such Standing Orders, such deeds of partnership or subscription contracts as shall be required to be deposited by such Standing Orders (*a*); and also return to the Registry Office a copy of such deeds of partnership or subscription contracts, together with such certificate of the receipt of such plans, sections, and books of reference, as shall be appointed by the Board of Commissioners of Railways (*b*).

To obtain a Certificate of Complete Registration.]—Take a copy of the parliamentary subscription contract, and the certificate required by the Board of Commissioners of Railways, of the receipt of the plans, &c., to the Registry Office; and, on payment of the fees (*c*), the registrar will give a certificate of complete registration. The registrar is entitled to receive such fees as may be appointed in respect of any extra services performed by him. (See List of Fees, post, Appendix, 247. See also the list of the forms for complete registration issued by the registrar, post, App., 245).

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5. Powers and Obligations resulting from complete Registration.

The 25th section of the statute, which points to this subject, seems to have been originally framed with a view 7 & 8 Vict. c. 110.

(*a*) See Lords' Standing Ord., No. 224. post 65; Commons' Standing Ord., No. 47. post 40.

(*b*) Sect. 9, post, Appendix, 43.

(*c*) Sect. 21. If within two years after the certificate of complete registration is obtained, the company obtains an act of incorporation, then three-fourths of the fee paid in respect of the capital is to be repaid to the company. See sect. 21, post, Appendix, 47.

to legislate for ordinary joint-stock companies, acting under deeds of settlement; and if railway companies and other similar companies had not been expressly mentioned in the proviso at the end of the section, it could scarcely have been supposed that such companies were in any manner within the contemplation of the Legislature. The remarks we shall offer as to the construction of this section will be better understood after a perusal of its contents.

Section 25 enacts, "that, on the complete registration of any company being certified by the registrar of joint-stock companies, such company and the then shareholders therein, and all the succeeding shareholders, whilst shareholders, shall be and are hereby incorporated as from the date of such certificate, by the name of the company as set forth in the deed of settlement, and for the purpose of carrying on the trade or business for which the company was formed, but only according to the provisions of this act, and of such deed as aforesaid, and for the purpose of suing and being sued, and of taking and enjoying the property and effects of the said company; and thereupon any covenants or engagements entered into by any of the shareholders, or other persons, with any trustee on the behalf of the company, at any time before the complete registration thereof, may be proceeded on by the said company, and enforced in all respects as if they had been made or entered into with the said company after the incorporation thereof; and such company shall continue so incorporated until it shall be dissolved and all its affairs wound up; but so as not in anywise to restrict the liability of any of the shareholders of the company under any judgment, decree, or order for the payment of money which shall be obtained against such company, or any of the members thereof, in any action or suit prosecuted by or against such company in any court of law or equity;

but every such shareholder shall, in respect of such monies, subject as after mentioned, be and continue liable, as he would have been if the said company had not been incorporated; and thereupon it shall be lawful for the said company, and they are hereby empowered, as follows: that is to say,

1. To use the registered name of the company, adding thereto "registered."

2. To have a common seal, with power to break, alter, and change the same from time to time, but on which must be inscribed the name of the company.

3. To sue and be sued by their registered name in respect of any claim by or upon the company upon or by any person, whether a member of the company or not, so long as any such claim may remain unsatisfied.

4. *To enter into contracts for the execution of the works and for the supply of the stores, or for any other necessary purpose of the company.*

5. *To purchase and hold lands, tenements, and hereditaments in the name of the said company, or of the trustees or trustee thereof, for the purpose of occupying the same as a place or places of business of the said company; and also (but nevertheless with a license, general or special, for that purpose, to be granted by the Committee of the Privy Council for Trade, first had and obtained) such other lands, tenements, and hereditaments as the nature of the business of the company may require.*

6. To issue certificates of shares.

7. *To receive instalments from subscribers in respect of the amount of any shares not paid up.*

8. *To borrow or raise money within the limitations prescribed by any special authority.*

9. *To declare dividends out of the profits of the concern.*

10. To hold general meetings periodically, and extraor-

dinary meetings upon being duly summoned for that purpose.

11. To make from time to time, at some general meeting of shareholders specially summoned for the purpose, bye-laws for the regulation of the shareholders, members, directors, and officers of the company, such bye-laws not being repugnant to, or inconsistent with, the provisions of this act, or of the deed of settlement of the company.

12. *To perform all other acts necessary for carrying into effect the purposes of such company, and in all respects as other partnerships are entitled to do.* And the said company are hereby empowered and required

13. To appoint from time to time, for the conduct and superintendence of the execution of the affairs of the company, a number of directors, not less than three, for a period not greater than five years, with or without eligibility to be re-elected at the expiration of the term, as may be prescribed by any deed of settlement or bye-law.

14. To appoint and remove one or more auditors, and such other officers as the deed of settlement under which the company shall be constituted may authorise. Subject, nevertheless, with respect to all such powers and privileges, to the provisions of this act, and subject also to the provisions of the deed of settlement of the company, or any other special authority. Provided always, with regard to any company for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock, which cannot be carried into execution without obtaining the authority of Parliament, that, on the complete registration of any such company, and before such company shall have obtained its act of incorporation, or other act whereby the authority of Parliament shall be granted for executing such

it shall not be lawful for any such company, or the rs or officers thereof, to exercise the hereinbefore- ned power to enter into contracts otherwise than con- lly upon obtaining such act; or to exercise the power hase and hold lands as aforesaid; or to exercise the to receive instalments from shareholders beyond the percentage necessary to be deposited, in compliance ie Standing Orders of either House of Parliament, or ther sum as may be requisite for obtaining the act rporation, or other act for granting the authority of nent to execute such work; or to exercise the power ow money, as aforesaid; or to exercise the power to dividends, as aforesaid: and, subject to these last- ned exceptions, all the powers by this enactment efore given to any company completely registered, the general power to perform all acts necessary for g on the business of the company, may be exercised by any such company so completely registered, as other company so completely registered. Provided that it shall be lawful for any such company to per- ll acts which may be necessary for obtaining an act rporation, or other act for obtaining the authority of nent to execute its works as aforesaid, anything contained to the contrary notwithstanding; and pon obtaining such act of incorporation, or other ct as aforesaid, or at the time of the coming into on of such act as shall be thereby appointed, all wers which any such company shall obtain by vir- this act, and all the provisions and regulations of t which shall apply to such company, shall cease termine, except so far as shall be otherwise pro- by such act of incorporation or other such act as id."

The portions of the foregoing section printed in italics are expressly declared by the proviso to be inapplicable to railway companies (*d*), and they may therefore be passed by without further comment; but, on the construction of the remaining portions of the section, the following observations seem to arise:—It is enacted, that, on the complete registration of any company, "such company, and the shareholders therein," are incorporated; and a company, when registered completely, is not only authorised, but *required*, to appoint directors and auditors: and by other sections the directors are required to manage the affairs of the company, and to appoint the officers (*e*); so they must not be interested in contracts (*f*); and they are also required to prepare certain periodical accounts (*g*).

It soon became a very much disputed question whether these and the numerous provisions, as to the registering of shareholders (*h*), the making of bye-laws (*i*), the enforcing of judgments (*k*), the holding of public meetings (*l*), and other equally important subjects, were applicable to railway companies: and it is obvious, that, as the 2nd section of the act (*m*), provides, that, "except as thereinafter specially provided," the act shall not refer to railway companies which cannot be carried into execution without obtaining the authority of Parliament, great doubts were reasonably entertained as to the true construction of the statute.

At length the Court of Exchequer decided (*n*), that the

(*d*) The powers 4 and 7 may be exercised to a limited extent, as is shewn by the proviso.

(*e*) Sect. 27, post, Appendix, 52.

(*f*) Sect. 29, post, Appendix, 53.

(*g*) Sect. 39, post, Appendix, 55.

(*h*) Sect. 26, post, Appendix, 51; s. 49, post, Appendix, 57.

(*i*) Sect. 47, post, Appendix, 57.

(*k*) Sects. 66 and 67, post, Appendix, 63.

(*l*) Sect. 27, post, Appendix, 52.

(*m*) Sect. 2, post, Appendix, 37.

(*n*) *Young* v. *Smith*, 15 M. & W. 121; which has been since recognised by the Court of Queen's Bench, in *Lawton* v. *Hickman*, 10 Jur. 543; 4 Railway Cases, 336.

26th section, which makes void all contracts for the sale of shares by unregistered shareholders (*o*), does not apply to railway companies requiring an act of Parliament.

This decision affords, to some extent, a key to the construction of the statute. *Alderson*, B., observes on this point, "I should conjecture from the statute that the intention of the Legislature was to make certain provisions for railway companies and others, until the 25th section, in which it is finally provided that railway companies, &c., having obtained the authority of an act of Parliament, shall be bound by that; and after that section the Legislature proceeds to make regulations for the transfer of shares of joint-stock companies of a different description; for in all the clauses in the statute subsequent to the 25th, there is no reference made to railway or other companies which are excepted out of the interpretation clause. I therefore think, that the object of the Legislature was to make certain general provisions down to the 25th section, and thenceforth further special provisions for the companies not specially provided for before. The 26th section, therefore, does not apply to a railway company which requires the authority of an act of Parliament and has not got one; and this plea is consequently bad, inasmuch as the contract between the parties was for the transfer of shares in a railway company which was excepted from the operation of that statute."

(*o*) See the opinion expressed as to the construction of the 26th section, post, 122, n. (*h*); also, post, Appendix, 52, n. (*b*). It will be easily perceived that these and the other notes appended to the statute, were all written before *Young* v. *Smith* was decided.

§ 2.—Course of proceeding upon railway bills in Parliament.

1. *Progress of the Bill through the Commons* . . . 16
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1. *Progress of the Bill through the Commons.*

It is not the object of this work to treat of the law and practice of Parliament in proceeding on private bills. Several able publications are already extant upon this subject; and as all railway bills are entrusted to the care of parliamentary agents (*a*), who are intimately acquainted with the practice of Parliament, it is unnecessary to discuss such matters in detail. But, as the course of procedure observed in passing a railway bill through Parliament, may at this time be a matter of interest to many persons, a short summary of the proceedings which take place is given in the text; and

(*a*) Various duties and responsibilities are imposed upon the parliamentary agent who has charge of a Private Bill in the Commons. (See Commons' Standing Ord., Nos. 140. 141, post 52). He is personally responsible for the observance of the rules prescribed by Parliament, and also for the payment of all fees and charges; and, before any party can be heard upon any petition against a bill, an appearance to act as the agent for the same must be entered in the Private Bill Office, in which appearance must also be specified the name of the solicitor and of the counsel who appear in support of any such petition. See Rules laid do wnby the Speaker, 1827; May on the Law and Usage of Parliament, 397.

the standing orders of both Houses of Parliament, so far as they relate to railway bills, and the formation of the committees to which they are referred, are annexed. The author trusts that this portion of the work may be found useful to landowners and other persons, who are interested in the numerous railway bills now before Parliament;—for their use it was intended; but it does not purport to treat in minute detail of each successive step in parliamentary practice (*s*). *Preliminary practice, &c.*

For reasons which will presently appear, the proceedings in the House of Commons are first considered.

By the privileges of the House of Commons, all bills which involve pecuniary charge upon the Queen's subjects must originate in that House; and railway bills are consequently passed first in the Commons (*t*). And it may be here remarked, that, by applying at the "*Private Bill Office*," the progress which has been made with any bill may be ascertained (*u*).

A railway company, having become provisionally registered under the provisions of the statute already mentioned (*v*), may be supposed to have raised the necessary funds to enable them to proceed with the undertaking,

(*s*) May on the Law and Usage of Parliament; Frere on the Practice of Committees of the House of Commons; Riddell on Railway Parliamentary Pract.; Lumley's Parliamentary Pract.; and Beavan & Walford's Parliamentary Cases,—are works which treat on the practice of Parliament; and a very useful summary of the practice before Parliamentary Committees, may be found in Walford on Railways, 2nd ed., Appendix, II. and III.; also in Collier's edition of the Consolidation Acts, Appendix, 34.

(*t*) 1 Bl. Comm. 170. See also, 3 Hat. Appendix; May on the Law and Usage of Parliament, 322. In the session 1846, the standing orders were suspended to enable the House of Lords to originate Irish Railway Bills. See Frere's Practice, 91.

(*u*) The Private Bill Register, which is kept there, is open to public inspection daily, between the hours of ten and six. See Commons' S. O., No. 138, post, 52. As to the service of notices at the Private Bill Office, see Id., No. 160, post, 56.

(*v*) 7 & 8 Vict. c. 110, ante, 2.

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and accordingly surveys are made, traffic-tables prepared, and such other preliminary proceedings taken, as may appear to the company to be necessary to comply with the standing orders in Parliament. We proceed to notice some of the principal preliminary matters required by the standing orders of the House of Commons.

A notice (*x*) of the intended application to Parliament must be published in three successive weeks, in the months of *October* and *November*, or either of them, in the London, Edinburgh, or Dublin Gazette, as the case may be, and in some one county newspaper. (*Commons' S. O.*, No. 19, post, 34).

Duplicate plans and sections (*y*), with a book of reference (*z*), are required to be deposited with clerks of the peace in England or Ireland (*a*), and with the principal sheriff clerk in Scotland (*b*), on or before the 30*th November*, (*Commons' S. O.*, No. 27, post, 36), together with a published map, with the line of railway delineated thereon, so as to shew its general course and direction. (*Commons' S. O.*, No. 54, post, 41). A copy of the plans, sections, and book of reference, and of the published map, must, on or before the 30*th November*, be deposited in the office of the railway depart-

(*x*) As to the heading of this notice, see Commons' S. O., No. 20, post, 34. As to its contents, Id., Nos. 20, 26, post, 35.

(*y*) As to the manner in which the plans and sections are to be made, see the plan annexed, post, Appendix; also, Commons' S. O., Nos. 27, 29, 30, post, 36; Id., Nos. 48, 49, 50, 51, 52, post, 40. As to the days and hours when a deposit will be deemed invalid, see Commons' S. O., No. 42, post, 39.

(*z*) As to the contents of the Book of Reference, see Commons' S. O., No. 27, post, 36.

(*a*) If the clerk of the peace resides at one place and his public office is at another, the plans should be deposited at the latter place: Walford on Railways, App., ccli.

(*b*) These officers are required to mark on the plans, &c., the time of the deposit; to permit all parties who apply to make copies, and to retain one of the copies deposited, sealed up, and produce it in Parliament. Commons' S. O., No. 31, post, 37. See also, 1 Vict. c. 83, post, App., 3.

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liament; and it is also necessary that an estimate and subscription contract be prepared. Upon this subject the standing orders require that an estimate of the expense of the undertaking under each bill shall be made, and a subscription entered into to three-fourths of the amount of such estimate (*e*). (*Commons' S. O.*, No. 34, post, 38). The subscription contract must be entered into subsequent to the last day for receiving petitions for private bills in the previous session (*f*), and the subscribers must bind themselves, their heirs, executors, and administrators, for the payment of the money so subscribed, to be recoverable by action at law. (*Commons' S. O.*, No. 47, post, 40). Previous to the *15th January*, a sum equal to one-tenth part of the amount subscribed must be deposited with the Court of Chancery in England or Ireland, or the Court of Exchequer in Scotland. (*Commons' S. O.*, No. 46, post, 39). In some cases, as where the work is to be made by means of funds to be raised upon the credit of present surplus revenue, (*Commons' S. O.*, No. 35, post, 38), or out of money to be raised upon the security of rates, under which no private pecuniary profit is to be derived, the subscription contract may be dispensed with under certain prescribed conditions. (*Commons' S. O.*, No. 36, post, 38).

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On or before the *31st December*, the petition for the bill, and a copy of the bill (*g*) annexed to the petition, and also

(*e*) See the form of the subscription contract, post, App., 253.

(*f*) The last day for receiving petitions for private bills is announced in the early part of every session. The subscription contract must contain the name and description of every subscriber, his signature, and the name of the party witnessing the same, and the date of the same. Commons' S. O., No. 37, post, 39. Copies of the subscription contract, with the names of the subscribers, &c., must be printed and delivered at the Vote Office, for the use of members, previous to the deposit of the petition for the bill. Ibid., No. 40, post, 39.

(*g*) As to the contents of the bill, see post, 103. The standing orders require certain provisions to be in-

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may appear by themselves, their agents and witnesses, upon any memorial (*m*) addressed to the examiner, complaining of a non-compliance with the standing orders, provided the matter complained of be specifically stated in such memorial, and that the party affected by such non-compliance with the standing orders, have signed the memorial, and that it be deposited in the Private Bill Office three clear days before the first day appointed for the examination of the petition. (*Commons' S. O.*, No. 11, post, 32). The examiner must certify, by indorsement on the petition, whether the standing orders have or have not been complied with; and if the latter, he must report the facts upon which his decision is founded, and any special circumstances. If he feels doubts as to the due construction of any standing order, he is to make a special report of the facts. (*Commons' S. O.*, Nos. 15 and 17, post, 33).

With respect to the presentation of the petition for the bill, it is to be observed, that a bill is always intrusted to one or two members of the House, who attend at the sitting of the House, and make such motions as are necessary to forward its progress. The bill is first brought into the House upon a petition, with a copy of the bill annexed, the petition being signed by some of the parties who are suitors for the bill, and duly indorsed by the above-mentioned examiner of petitions for private bills. This petition for the bill must be presented on or before a day to be appointed by the House, at the commencement (*n*) of every session. (*Commons' S. O.*, Nos. 112 and 113, post, 49). The report of the examiner of petitions for the bill is referred to the

pliance with the standing orders, see Commons' S. O., Nos. 12, 13, 14, post, 33. See also the regulations for facilitating the business before the examiners, post, Appendix, 273.

(*m*) When memorials must be deposited, see resolution passed in February, 1847, post, App., 275.

(*n*) And three clear days after it shall have been indorsed by the examiner, see resolution passed in February, 1847, post, App., 275.

committee on standing orders (*o*). (*Commons' S. O.*, No. 115, post, 49). The bill having been printed (*p*), and read a first and afterwards a second time (*q*), it is committed. Proceedings in House.

During the last two sessions of Parliament, (1845-6), all railway bills were referred to a committee, called *the Classification Committee of Railway Bills*, who were required to form into groups all bills or projects for railways, professing to be competing lines, or which were intended to traverse the same district of country. The object of this was, that each group of bills should be submitted to the same committee, which consisted of a chairman and four members, each of whom, before they were entitled to attend and vote, had to sign a declaration that his constituents had no local interest, and that he himself had no personal interest for or against any bill or project referred to him (*r*). In the present session of Parliament, a similar system of grouping bills has been adopted; and it is not therefore desirable to trace out in detail the constitution of the committees on private bills under the existing standing orders, inasmuch as these orders are suspended, so far as they affect railway bills. It is sufficient on this head to refer to the

(*o*) This committee is nominated at the commencement of every session, and consists of eleven members, five being a quorum: Commons' S. O., No. 3, post, 32. See the names of the members appointed for the session 1847, post, App. They report to the House, whether standing orders not complied with ought to be dispensed with; Ibid, No. 57, post, 41: and it is their duty to construe standing orders when a special report is made by the examiners of petitions; Ibid., No. 58, post, 41. Petitions for leave to dispense with any of the standing orders, or for the re-examination of a petition for a bill in the examiner's list, are also referred to this committee; Ibid., Nos. 59, 60, post, 42; No. 116, post, 49; and when clauses and amendments are referred to them, they report to the House whether the bill ought to be recommitted. Ibid., Nos. 61, 62, post, 42.

(*p*) As to the form in which the bill is to be printed, see Commons' S. O., Nos. 117, 118, & 119, post, 49.

(*q*) As to what is requisite between the first and second readings, see Commons' S. O., Nos. 120, 122, 124, 125, post, 50; No. 147, post, 54.

(*r*) Frere's Practice, 80.

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resolutions agreed to by the House of Commons in Febr 1847 (*s*), wherein the duties of the Classification Comm the Committee of Selection, and the Committee on a way Bill are set forth. It is, however, important to r the following standing orders, having reference to the ceedings which take place before the committee on the

All petitions against railway bills are uniformly ref by the House to the committee on the group which inc the bill. By the standing orders, all such petitions be presented to the House three clear days before th appointed for the first meeting of the committee (*t*). the petition must distinctly specify the ground on whic petitioners object to any of the provisions of the bill (u

Various duties are imposed by the standing orde the committee to which the bill may be referred. are required to report the bill to the House (*x*), and a report specially upon many points specifically mentione their consideration. Thus, if the committee on a ra bill recommend that, in the alteration of the level of r steeper ascents than are specified in the standing orde allowed, or that a railway should be made across a ro the level, they are to report the reasons and facts upon w such opinion is founded. (*Commons' S. O.*, Nos. 97

(*s*) See these Resolutions, post, App., 275.

(*t*) Commons' S. O., No. 79, post, 44. It was decided in the session 1845,—Group G, Mr. Macaulay, chairman,—that the committee had no power to entertain a petition presented later than three days before the first sitting of the committee, although the petition was expressly referred to them by a vote of the House. See Collier on the Consolidation Acts, Appendix, p. 50. It seems that the House ought, with reference to this case, to hav pended the standing order, wh quired the petition to be pr three days before the first mee the committee. The committe bably considered, that a mere ence of the petition was insuf the standing order being still in

(*u*) Commons' S. O., N post, 44; and see Commons' No. 121, post, 50; and Res No. 25, post, App., 278.

(*x*) Commons' S. O., No. 94 46.

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which the group is composed. No uniform rule was adopted by the committees, on the various groups of bills, during the sessions of 1845 and 1846, as to the order in which the bills referred to them were considered. Sometimes the unopposed bills were taken first, and the opposed bills afterwards, in the order in which they had been read a second time (*z*); but these rules were frequently departed from, whenever the committee considered it more desirable to adopt some other course of proceeding (*a*).

A question much discussed in the above-named sessions was, as to what constituted a *locus standi* before the committee, to be heard by counsel against a bill.

It seems, that all competing projects which have been referred to the same group, are entitled to be heard in opposition; and a company projecting a competing scheme, and who have applied to Parliament for a bill, may appear in opposition, although their bill has been dismissed in consequence of non-compliance with the standing orders.

Owners and occupiers of premises to be cut through, or otherwise actually damaged, or rendered less accessible, by the projected railway, have also a *locus standi* to be heard before the committee; but if a petitioner's property be only deteriorated, indirectly, through the loss of trade or other circumstances, then he has, it seems, no *locus standi* to be heard in opposition to the bill. And some committees have held that this rule extends to cases where public bodies, as corporations, petition against a bill upon the ground that their tolls, or other like revenues, may be affected by the formation of the projected railway (*b*). It is believed, how-

(*z*) 1 Beav. & Wal. 18.

(*a*) 1 Beav. & Wal. 26. Suggestions on these points for the consideration of the select committees on railway groups were issued during the sessions 1845 and 1846. See Frere's Practice, 80; Walford on Railways, Appendix, ccc., 2nd ed. In 1846, certain resolutions were also passed upon the motion of Mr. T. S. Duncombe; see 1 Beav. & Wal. xviii.

(*b*) This rule was acted upon in

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Board of Trade, *Id.*, No. 227, sect. 1, post, 67; in the Parliament Office, *Id.*, No. 223, sects. 8, 10, post, 62, 64.

As to the deposit of plans and sections of alterations, and making the same known to owners and occupiers, *Id.*, No. 223, sect. 9, post, 64.

As to the notices required to be given to owners, lessees, and occupiers, *Id.*, No. 220, sect. 4, post, 60; No. 223, sects. 9, 12, post, 63.

As to lists of owners, lessees, and occupiers, and of assents, dissents, and neuters, *Id.*, No. 220, sect. 4, post, 60. As to the deposit of a statement of the length and breadth of lands to be taken, and of dissents, or of any written objections to the railway, *Id.*, Order of 1847, post, 74.

As to the deposit of a portion of the subscribed capital, *Id.*, No. 224, sect. 4, post, 66.

As to the estimate and subscription contract, *Id.*, No. 224, sects. 1, 2, 3, 4, 5, post, 65.

As to the delivery of copies of the same in the Parliament office, *Id.*, No. 224, sect. 6, post, 66.

As to the delivery of a copy of the bill at the Board of Trade, *Id.*, No. 227, sect. 2, post, 68; No. 234, sect. 4, post, 73.

As to the service of notices, *Id.*, No. 220, sect. 5, post, 60; No. 224, sect. 7, post, 67.

As to the notice required before a bill is read a second time, see Notice No. 4, post, 74.

As to the clauses and provisions which a railway bill must contain, No. 233, sects. IV, V, post, 71, 72, 73.

As to the matters to be inquired into and reported upon by the committee, *Id.*, No. 233, post, 69.

As to petitions for non-compliance with the standing orders, *Id.*, No. 219, post, 57.

As to petitions before the committee on the merits, *Id.*, No. 219, post, 59; No. 234, sect. 2, post, 73. See also Notices Nos. 2 & 3, post, 74.

As to proof of the subscription of names to the petition for the bill, *Id.*, No. 225, post, 67.

Opposed bills are referred to a select committee composed of five Lords (*q*); but during the session of 1846, all railway bills, whether opposed or not, were so referred.

The course of proceeding before the Lords' select committee is, in all substantial particulars, the same as that already described with reference to the proceedings before the committee on a group of bills in the House of Commons; and as the standing orders in the two Houses of Parliament are now nearly assimilated in their provisions, as to railway bills, it is obvious that the clauses in the bill, required by the standing orders of the House of Lords, must have been inserted during its progress in the Commons (*r*). But the House of Lords, as an independent branch of the Legislature, requires that all necessary matters shall be proved to the satisfaction of its committees; and, therefore, great care must be taken to observe a strict compliance with the standing orders in all particulars.

The bill having gone through committee, it is reported to the House, and finally read a third time, and passed.

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3. *Standing Orders of the House of Commons*, A. D., 1847, *so far as they relate to Railway Bills, and the Committees to which they are referred.*

I. *Appointment of Committees and Examiners of Petitions.*

1. That Mr. Speaker shall appoint one or more officers, to be called "The Examiners of Petitions for Private Bills," and shall from time to time remove the same and appoint others in their stead as he shall see occasion.

1. Examiners of petitions.

(*q*) See Lords' S. O., No. 219, post, 58.

(*r*) Lords' S. O., No. 233, sects. 1, 4, & 5, post, 69.

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2. That one of the examiners shall be appointed by Mr. Speaker chief examiner (*s*).

2. Chief examiner.

3. Committee on standing orders.

3. That a committee, to be designated "The Select Committee on Standing Orders," shall be nominated at the commencement of every session, and shall consist of eleven members, of whom five shall be a quorum.

4. Committee of selection.

4. That the chairman of the Select Committee on Standing Orders, and the members of the general committee of elections, shall ex officio constitute a committee, to be denominated "The Committee of Selection," of whom three shall be a quorum.

5 & 6 relate to the committees on ordinary private bills; these orders are usually suspended so far as they affect railway bills. See ante, 23.

7 relates to divorce bills.

8. Members not to be added to committee.

8. That, after any committee on a private bill shall have been formed, no members be added thereto, unless by special order of the House.

II. *Duties of Examiners and of Committees.*

Duty of the Examiners of Petitions for Private Bills.

9. When examinations of petitions to commence.

9. That the examination of the petitions shall commence on the 15th January, in such order and according to such regulations as shall be made by Mr. Speaker; and the chief examiner shall make arrangements for the distribution of the business amongst the examiners.

10. Notice to be given by chief examiner.

10. That the chief examiner shall give at least seven clear days' notice in the Private Bill Office of the day appointed for the examination of each petition; and in case the promoters shall not appear at the time when the petition shall come on to be heard, the examiner to whom the case shall have been allotted, shall strike the petition off the list, and shall not re-insert the same, except by order of the House.

11. Compliance with standing orders to be proved before examiner.

11. That the compliance with the following standing orders shall be proved before one of the examiners of petitions for private bills; and any parties shall be at liberty to appear and be heard, by themselves, their agents, and witnesses, upon any memorial addressed to the examiner, complaining of a non-compliance with the standing

(*s*) See the regulations published by the Speaker at the commencement of the session 1847, for facilitating the progress of business before the examiners, post, Appendix, 273.

order, provided the matter complained of be specifically stated in such memorial, and that the party affected by the non-compliance with the standing orders shall have signed such memorial, and that such memorial be deposited in the Private Bill Office three clear days before the day first appointed for the examination of the petition.

12. That, in the case of any application for a private bill relating to England, the examiner may admit proof of the compliance with the standing orders which refer to the affixing to the church-doors the requisite notices, and to the applications to owners, lessees, and occupiers, on the production of affidavits sworn before a justice of the peace, unless the examiner shall require further evidence.

12. Standing orders may be proved on affidavit.—(England.)

13. (a) That, in the case of any application for a private bill relating to Scotland, the examiner may admit proof of the compliance with the standing orders which refer to the affixing to the church-doors the requisite notices, and to the applications to owners, lessees, and occupiers, on the production of affidavits sworn before any sheriff depute or his substitute there, unless the examiner shall require further evidence.

13. (a) Standing orders may be proved on affidavit.—(Scotland.)

14. That, in the case of any application for a private bill relating to Ireland, the examiner may admit proof of the compliance with the standing orders of the House, on the production of affidavits sworn before any judge or assistant barrister of that part of the United Kingdom, unless the examiner shall require further evidence.

14. Standing orders may be proved on affidavit.—(Ireland.)

15. That the examiner shall certify by indorsement on each petition which shall have been deposited in the Private Bill Office, whether the standing orders have or have not been complied with; and, when they have not been complied with, he shall also report to the House the facts upon which his decision is founded, and any special circumstances connected with the case.

15. Examiner to report whether standing orders have been complied with.

16. That in all cases of petitions for additional provision in private bills and of estate bills brought from the House of Lords and referred to the examiner, he shall report to the House whether the standing orders have or have not been complied with; and, when they have not been complied with, the facts upon which his decision is founded, and any special circumstances connected with the case.

16. To report in certain petitions.

17. That, in case the examiner shall feel doubts as to the due construction of any standing order in its application to a particular case, he shall make a special report of the facts to the House, without deciding whether the standing order has or has not been complied with;

17. Examiner to make a special report in certain cases.

(a) This standing order was repealed 4th February, 1847. Votes, 139. See the order substituted, Appendix, post, 278.

and in such case he shall indorse the petition with the words "Special Report," either alone, or, if non-compliances with other standing orders shall have been proved, in addition to the words "Standing Orders not complied with."

18. Notices of application.

18. That notices be given in all cases where application is intended to be made for leave to bring in a bill relating to the subjects included in any of the following classes:—

1st Class does not relate to railway bills.

2nd Class refers (inter alia) to bills for "making, maintaining, varying, extending, or enlarging any railway."

3rd Class refers to bills for "continuing or amending an act passed for any of the purposes included in this or the two preceding classes, where no further work than such as was authorised by a former act is proposed to be made."

19. Notices to be published.

19. That such notices be published in three successive weeks in the months of October and November, or either of them, immediately preceding the session of Parliament in which application for the bill shall be made, in the London, Edinburgh, or Dublin Gazette, as the case may be, and in some one and the same newspaper of the county in which the city, town, or lands to which such bill relates shall be situate; or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto; or if such bill do not relate to any particular city, town, or lands, in the London, Edinburgh, or Dublin Gazette only, as the case may be; and that all notices required to be inserted in the London, Edinburgh, or Dublin Gazette, be delivered at the office of the Gazette in which the insertion is required to be made, during the usual office hours, at least two clear days previous to the publication of the Gazette; and that the receipt of the printer for such notice shall be proof of its due delivery.

20. Intention to apply for certain powers to be stated.

20. That, if it be the intention of the parties applying for leave to bring in a bill, to obtain powers for the compulsory purchase of lands or houses, or for extending the time granted by any former act for that purpose, or to amalgamate with any other company, or to sell or lease their undertaking, or to purchase or take on lease the undertaking of any other company, or to levy any tolls, rates, or duties, or to alter any existing tolls, rates, or duties, or to confer, vary, or extinguish any exemptions from payment of tolls, rates, or duties, or any other rights or privileges, the notices shall specify such intention; and that the whole of the notice relating to the same bill shall be included in the same advertisement, which shall be headed by a short title, descriptive of the undertaking.

shall contain the names of the parishes, townships, townlands, and extra-parochial places from, in, through, or into which the work is intended to be made, maintained, varied, extended, or enlarged, and shall state the time and place of deposit of the plans, sections, and books of reference respectively, with the clerks of the peace, parish clerks, schoolmasters, town clerks, and clerks of unions, as the case may be.

27. Duplicate plans and sections, &c., to be deposited with clerks of the peace, &c.

27. That a plan, and also a duplicate of such plan, on a scale of not less than four inches to a mile, be deposited for public inspection at the office of the clerk of the peace for every county, riding, or division, in England or Ireland, or in the office of the principal sheriff

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the form left herewith, and returning the same to us with your signature on or before the —— day of —— next; and if there should be any error or misdescription in the annexed schedule, we shall feel obliged by your informing us thereof at your earliest convenience, that we may correct the same without delay.

We are, Sir,

Your most obedient servants,

To

SCHEDULE REFERRED TO IN THE FOREGOING NOTICE,

And which is intended to shew the property therein alluded to, and the Manner in which the Line of the deposited Section will affect the same.

——	Parish, Township, Townland, or Extra-Parochial Place.	Number on Plans.	Description.	Owner.	Lessee.	Occupier.	Description of the Section of the Line deposited, and of the greatest Height of Embankment and Depth of Cutting.
Property in the Line as at present laid out.							
——	Parish, Township, Townland, or Extra-Parochial Place.	Number on Plans.	Description.	Owner.	Lessee.	Occupier.	
Property within the Limits of the Deviation intended to be applied for.							

clerk of every county in Scotland, in or through which the work is proposed to be made, maintained, varied, extended, or enlarged, on or before the 30th day of November immediately preceding the session of Parliament in which application for the bill shall be made; which plans shall describe the line or situation of the whole of the work (no alternative line or work being in any case permitted), and the lands in or through which it is to be made, maintained, varied, extended, or enlarged, or through which every communication to or from the work shall be made, together with a book of reference containing the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of such lands respectively; and in the case of bills relating to turnpike roads, cuts, canals, reservoirs, aqueducts, and railways, a section and duplicate thereof, as hereinafter described, shall likewise be deposited with such plan and duplicate.

28. Plans of works on tidal lands to be deposited at Admiralty.

28. That, in cases where the work shall be situated on tidal lands within the ordinary spring-tides, a copy of the plans and sections shall, on or before the 30th day of November, be deposited at the office of the Board of Admiralty.

29. Lands within deviation to be on plan.—Buildings, &c., to be on enlarged scale.

29. That, where it is the intention of the parties to apply for powers to make any lateral deviation from the line of the proposed work, the limits of such deviation shall be defined upon the plan, and all lands included within such limits shall be marked thereon; and that in all cases, excepting where the whole of such plan shall be upon a scale of not less than a quarter of an inch to every 100 feet, an additional plan of any building, yard, court-yard, or land within the curtilage of any building, or of any ground cultivated as a garden, either on the original line or included within the limits of the said deviation, shall be laid down on the said plan, or on the additional plan deposited therewith, upon a scale of not less than a quarter of an inch to every 100 feet.

30. Scale of section.

30. That the section be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to every 100 feet, and shall show the surface of the ground marked on the plan, and the intended level of the proposed work, and a datum horizontal line, which shall be the same throughout the whole length of the work, or any branch thereof, respectively, and shall be referred to some fixed point stated in writing on the section, near either of the termini.

31. Clerks of Peace &c., to indorse a memorial on plans, &c.

31. That the clerks of the peace or sheriff clerks, or their respective deputies, do make a memorial in writing upon the plans, sections, and books of reference so deposited with them, denoting the time at

which the same were lodged in their respective offices, and do at all seasonable hours of the day permit any person to view and examine one of the same, and to make copies or extracts therefrom; and that one of the two plans and sections so deposited be sealed up and retained in the possession of the clerk of the peace or sheriff clerk until called for by order of one of the two Houses of Parliament. (See 1 Vict. c. 83; post, App. 3).

32. Plan and section relating to each parish to be deposited with the parish clerk, &c.

32. That, on or before the 30th day of November, a copy of so much of the said plans and sections as relates to each parish in or through which the work is intended to be made, maintained, varied, extended, or enlarged, together with a book of reference thereto, be deposited with the parish clerk of each such parish in England, the schoolmaster of each such parish in Scotland, (or in royal burghs with the town clerk), and the clerk of the union within which such parish is included in Ireland. (See 1 Vict. c. 83; post, App. 3).

33. Copy of the plans, &c., to be deposited in the Private Bill Office.

33. That, on or before the 30th day of November, a copy of the said plans, sections, and books of reference be deposited in the Private Bill Office of this House.

34. Estimate and subscription contract.

34. That an estimate of the expense of the undertaking under each bill be made and signed by the person making the same, and that a subscription be entered into under a contract, made as hereinafter described, to three-fourths the amount of such estimate.

35. Where a declaration may be substituted.

35. That, in cases where the work is to be made, wholly or in part, by means of funds, or out of money to be raised upon the credit of present surplus revenue, belonging to any society or company, or under the control of directors, trustees, or commissioners, as the case may be, of any existing public work, such parties being the promoters of the bill, a declaration stating those facts, and setting forth the nature of such control, and the nature and amount of such funds or surplus revenue, and shewing the actual surplus of such funds or revenue, after deducting the funds which may be required for any other work to be executed under any bill in the same session, and given under the common seal of the society or company, or under the hand of some authorised officer of such directors, trustees, or commissioners, may be substituted in lieu or in aid of the subscription contract, and in addition to the estimate of the expense, provided such funds shall be equal to the whole amount of the estimate, or the portion thereof not provided for by a subscription contract.

36. Where a declaration and estimate of amount of rates may be substituted.

36. That, in cases where the work is to be made out of money to be raised upon the security of the rates, duties, or revenue, to be created by or to arise under any bill, under which no private or personal

Court of Chancery in England, if the railway is intended to be made in England; or with the Court of Chancery in England or the Court of Exchequer in Scotland, if such railway is intended to be made in Scotland; and with the Court of Chancery in Ireland, if such railway is intended to be made in Ireland.

47. Subscription contract, when to be entered into.

47. That, as regards railway bills, no subscription contract shall be valid, unless it be entered into subsequent to the day fixed in the session of Parliament previous to that in which application is made for leave to bring in the bill to which it relates, as the last day on which petitions for private bills may be presented, and unless the parties subscribing to it bind themselves, their heirs, executors, and administrators, for the payment of the money so subscribed, to be recoverable by action at law.

48. Distances and curves to be marked on plan.

48. That, in all cases where it is proposed to make, vary, extend, or enlarge any railway, the plan shall exhibit thereon the distances in miles and furlongs from one of the termini; and a memorandum of the radius of every curve not exceeding one mile in length shall be noted on the plan in furlongs and chains.

49. Line on section to correspond with upper surface of rails.

49. That in every section of a railway, the line marked thereon shall correspond with the upper surface of the rails.

50. Vertical measures to be marked at change of gradient.

50. That distances on the datum line shall be marked in miles and furlongs, to correspond with those on the plan; that a vertical measure from the datum line to the line of the railway shall be marked in feet and inches at each change of the gradient or inclination; and that the proportion or rate of inclination between each such change shall also be marked.

51. Height and depth of railway to be marked at every crossing of a road, &c.

51. That the height of the railway over, or depth under the surface of every turnpike-road, public carriage-road, navigable river, canal, or railway, or junction with a railway, and the height and span of every arch of all bridges and viaducts by which the railway shall be carried over the same, shall be marked in figures at every crossing thereof, and the extreme height over or depth under the surface of the ground shall be marked for every embankment and cutting exceeding five feet; and if any alteration in the present level or rate of inclination of any turnpike-road, carriage-road, or railway be intended, then the same shall be stated on the said section, and each numbered; also that cross sections, in reference to the said numbers, on a horizontal scale of one inch to every 330 feet, and on a vertical scale of one inch to every forty feet, shall be added, to explain the nature of such alterations more clearly.

52. Tunnelling

52. That, where tunnelling as a substitute for open cutting, or a

to the House whether such sessional orders ought or ought not to be dispensed with.

60. To report whether petition for bill ought to be re-inserted.

60. That, when any petition for the re-insertion of any petition for a private bill in the examiner's list shall have been referred to the select committee on standing orders, they shall report to the House, whether, in their opinion, such petition ought or ought not to be re-inserted, and, if re-inserted, under what (if any) conditions.

61. To report whether clauses or amendments ought to be adopted without re-commitment.

61. That, when any clause or amendment proposed to any private bill on the report, or the consideration of the report thereof, shall have been referred to the select committee on standing orders, they shall report to the House whether such clause or amendment be of such a nature as not to be adopted by the House without the re-commitment of the bill, or of such a nature as to justify the House in entertaining it without recurring to that proceeding, or of such a nature as not, in either case, to be adopted by the House.

62. To report whether clauses or amendments on third reading ought to be adopted at that stage.

62. That, when any clause or amendment proposed to any private bill on the third reading shall have been referred to the select committee on standing orders, they shall report to the House whether such clause or amendment ought or ought not to be adopted by the House at that stage.

From Nos. 63 to 65 inclusive, the duties of the committee of selection are set forth: but, as these standing orders are suspended during the session 1847, so far as railway bills are concerned, by the resolution No. 8, post, App. 275, it is unnecessary to insert them here: (see also ante, 23.)

66. Unopposed bills.

66. That the committee of selection shall consider no bill as an opposed private bill, where no petition has been presented in which the petitioners pray to be heard, by themselves, their counsel, or agents, unless in cases where the chairman of Ways and Means shall have reported to the House that, in his opinion, any bill should be so treated.

67. Unopposed bills, how to be referred.

67. That the committee of selection shall refer every unopposed private bill referred to them, and which shall have originated in this House, to the chairman of the committee of Ways and Means, together with the members ordered to prepare and bring in the bill; and shall refer every unopposed private bill referred to them, which shall have been brought from the House of Lords, to the chairman of the committee of Ways and Means, together with not less than two other members, to be named by the committee of selection.

68. Appointment of first sitting of committee on the bill.

68. That the committee of selection shall, subject to the order that there be seven clear days between the second reading of every pri-

SPECIALLY RELATING TO THE COMMITTEE ON AN OPPOSED BILL.

72, inclusive, are suspended in like manner as Nos. 63 to 65.

That five members (including the quorum of selected members) shall be the quorum of every committee on an opposed private bill; that no such committee shall proceed to business, or continue its inquiry or deliberations, unless such number of members selected and duly qualified to serve on such committee shall be present. 73. Quorum to be present.

That, so soon after the expiration of ten minutes, and not later than the time appointed for the first sitting of a committee on an opposed private bill, as there shall be present at least five members selected and duly qualified to serve on such committee, (including the quorum of selected members), the clerk shall direct the messenger in attendance on the committee to clear the room of all strangers, and shall close the door of the committee-room; and the members then present shall proceed to appoint a chairman. 74. When proceedings to commence.

That the member to be appointed the chairman of each committee on an opposed private bill shall be one of the selected members. 75. Chairman to be a selected member.

That, if, at any time during the sitting of the committee, a quorum of the selected members shall not be present, the chairman of the committee shall suspend the proceedings of such committee until such quorum shall be present; and that, if, at the expiration of one hour from the time fixed for the meeting of the committee, or from the time when the chairman shall so have suspended the pro- 76. When proceedings to be suspended.

cannot attend, in consequence of any of the members who shall have duly qualified to serve on such committee having become incompetent to continue such service, by having been placed on an election committee, or by death or otherwise, the chairman shall report the circumstances of the case to the House, in order that such measures may be taken by the House as shall enable the members still remaining on the committee to proceed with the business referred to such committee, or as the exigency of the case may require.

78. Petition against bill to specify objection.

78. That no petition against a private bill be taken into consideration by the committee on such bill, which shall not distinctly specify the ground on which the petitioners object to any of the provisions thereof; and that the petitioners be only heard on such grounds so stated; and if it shall appear to the said committee, that such grounds are not specified with sufficient accuracy, the committee may direct that there be given in to the committee a more specific statement, in writing, but limited to such grounds of objection so inaccurately specified.

79. Petition against bill, when to be presented.

79. That no petitioners against any private bill shall be heard before the committee on the bill, unless the petition shall have been presented to the House three clear days before the day appointed for the first meeting of such committee, unless the petitioners shall complain of any matter which may have arisen during the progress of the bill before the said committee.

80 to 82 inclusive relate to committees on unopposed bills, see ante.

83. Names of members, and lists of divisions to be reported.

83. That the names of the members attending each committee be entered by the clerk on the minutes of the committee; and if any division shall take place in the committee, the clerk to take down the names of members voting in any such division, distinguishing on which side of the question they respectively vote, and that such lists be given in with the report to the House.

84. Committee not to inquire into compliance with certain standing orders.

84. That no committee shall have power to examine into the compliance or non-compliance with such standing orders as are directed to be proved before the examiner of petitions for private bills, unless by special order of the House.

85. Standing orders, &c., may be proved on affidavit.—(Scotland.)

85. That, in the case of any private bill relating to Scotland, the committee may admit proof of the compliance with the standing orders of this House, and of the consents of parties concerned in interest in such private bill, on the production of affidavits sworn before any sheriff depute or his substitute there, whose certificate shall be admitted as evidence of such proof having been made, unless the committee shall require further evidence.

86. That, in the case of any private bill relating to Ireland, the committee may admit proof of the compliance with the standing orders of the House, and of the consents of parties concerned in interest in such private bill, on the production of affidavits sworn before any judge or assistant-barrister of that part of the United Kingdom, whose certificate shall be admitted as evidence of such proof having been made, unless the committee shall require further evidence.

86. Standing orders, &c., may be proved on affidavit.—(Ireland.)

87. That, in all other instances, the committee may admit proof of the consents of parties concerned in interest in any private bill, on the production of certificates in writing of such parties, whose signature to such certificate shall be proved by one or more witnesses, unless the committee shall require further evidence.

87. Consents in other cases.

88. That in all bills presented to the House for carrying on any work by means of a company, commissioners, or trustees, provision be made for compelling persons who have subscribed any money towards carrying any such work into execution, to make payment of the sums severally subscribed by them.

88. Clause compelling payment of subscriptions.

89. That, in all bills whereby any parties are authorized to levy fees, tolls, or other rate or charge, clauses be inserted, providing for the following objects, except in so far as any of such objects shall have been provided for in some general act applicable to the subject-matter of the bill (*a*):—

89. Provision to be made in certain bills.

That security be taken from the treasurer, collector, or receiver, and every other officer entrusted with the collection or custody of monies under the bill, for the faithful execution of his office.

Security to be taken from Treasurer, &c.

That full and accurate accounts be kept of all monies received and expended under the provisions of the bill, and that such accounts be balanced once in each year at the least.

Accounts to be kept.

That such accounts be duly audited once in each year at the least, and that for such purpose an auditor or auditors be appointed by some person or persons not immediately connected with the commissioners, directors, trustees, or other party, by whom, or by whose direction or authority, such fees, tolls, rates, or charges shall be levied.

Accounts to be audited.

That, for the purpose of auditing such accounts, the commissioners, directors, trustees, or other such party as aforesaid, be required to cause the accounts, together with all their books and vouchers, to be produced to the auditors.

Accounts, vouchers, &c., to be produced to auditors.

(*a*) The Companies Clauses Consolidation Act, 8 & 9 Vict. c. 16, incorporates the provisions here referred to. See post, 118.

Remuneration to auditors.

That the remuneration of the auditor, and his expenses, be defrayed out of the funds levied under the bill.

Account to be annually transmitted to clerk of peace.

That an annual account, in abstract, be prepared of the total receipts and expenditure of all funds levied under such bill for the past year, under the several distinct heads of receipts and expenditure, with a statement of the balance of the said account duly audited and certified by the chairman of the commissioners, directors, trustees, or other parties aforesaid, and also by the auditors thereof; and that a copy of such annual account be transmitted, free of charge, to the clerk of the peace (or in Scotland to the sheriff clerk) for the county, or to the clerk of the city or borough within which the chief office for the management of such funds shall be situated, on or before the thirty-first day of January in each year, under a sufficient penalty for not preparing and sending in the said account, to be levied by summary process; the said account to be open at all seasonable hours to the inspection of the public upon payment of a fee.

90. Level of roads. Fence to be made to bridges.

90. That, where the level of any road shall be altered in making any public work, the ascent of any public carriage-road shall not be more than one foot in thirty feet; and that a good and sufficient fence, of four feet high at the least, shall be made on each side of every bridge which shall be erected.

91. Plan and book of reference to be signed by chairman, and deposited.

91. That every plan, and book of reference thereto, which shall be produced in evidence before the committee upon any private bill (whether the same shall have been previously lodged in the Private Bill Office, or not) shall be signed by the chairman of such committee with his name at length; and he shall also mark with the initials of his name every alteration of such plan and book of reference, which shall be agreed upon by the said committee; and every such plan and book of reference shall thereafter be deposited in the Private Bill Office.

92. Committee bill to be signed by chairman.

92. That the chairman of the committee do sign, with his name at length, a printed copy of the bill (to be called the Committee Bill), on which the amendments are to be fairly written; and also sign, with the initials of his name, the several clauses added in the committee.

93. Chairman to report on allegations of bill, &c.

93. That the chairman of the committee shall report to the House, that the allegations of the bill have been examined; and whether the parties concerned have given their consent (where such consent is required by the standing orders) to the satisfaction of the committee.

94. Chairman to report bill.

94. That the chairman of the committee shall report the bill to the

House, whether the committee shall or shall not have agreed to the preamble, or gone through the several clauses, or any of them; and when any alteration shall have been made in the preamble of the bill, such alteration, together with the ground of making it, shall be specially stated in the report.

95. That the minutes of the committee on every private bill be brought up and laid on the table of the House, with the report of the bill. 95. Minutes of committee to be brought up.

96. That, in the case of a railway bill, no company shall be authorised to raise, by loan or mortgage, a larger sum than one-third of their capital; and that, until fifty per cent. on the whole of the capital shall have been paid up, it shall not be in the power of the company to raise any money by loan or mortgage. 96. Restrictions as to mortgage.

97. That, where the level of any road shall be altered in making any railway, the ascent of any public carriage-road shall not be more than one foot in thirty feet; unless a report from some officer of the Railway Department of the Board of Trade shall be laid before the committee on the bill, recommending that steeper ascents than the above may be allowed, with the reasons and facts upon which such opinion is founded; and the committee shall report in favour of such recommendation: also, that a good and sufficient fence, of four feet high at the least, shall be made on each side of every bridge which shall be erected. 97. Level of roads. Fence to be made to bridges.

98. That no railway whereon carriages are propelled by steam, or by atmospheric agency, or drawn by ropes in connexion with a stationary steam-engine, shall be made across any turnpike-road or other public carriage-way on the level, unless the committee on the bill report that such a restriction ought not to be enforced, with the reasons and facts upon which their opinion is founded. 98. Railways not to cross roads on same level.

99. That, in the case of a railway-bill, the committee report specially:— 99. Committees on railway bills to report specially:—

1. The proposed capital of the company formed for the execution of the project, and the amount of any loans which they may be empowered to raise by the bill. Capital and loans.
2. The amount of shares subscribed for, and the deposits paid thereon. Shares and deposits.
3. The names and places of residence of the directors or provisional committee, with the amount of shares taken by each. Names, &c., of directors.
4. The number of shareholders who may be considered as having a local interest in the line, and the amount of capital subscribed for by them. Local shareholders.

Other parties, &c.

5. The number of other parties, and the capital taken by them.

Subscribers for 2000*l.* and upwards.

6. The number of shareholders subscribing for 2000*l.* and upwards, with their names and residences, and the amount for which they have subscribed.

Whether report from Board of Trade has been referred to the committee, &c.

7. Whether any report from the Board of Trade in regard to the bill, or the objects thereby proposed to be authorised, has been referred by the House to the committee; and, if so, whether any and what recommendations contained in such report have been adopted by the committee, and whether any and what recommendations contained in such report have been rejected.

Assistant engines.

8. What planes on the railway are proposed to be worked either by assistant-engines, stationary or locomotive, with the respective lengths and inclinations of such planes.

Engineering difficulties.

9. Any peculiar engineering difficulties in the proposed line, and the manner in which it is intended they should be overcome.

Ventilation of tunnels.

10. The length, breadth, and height, and means of ventilation, of any proposed tunnels, and whether the strata through which they are to pass are favourable or otherwise.

Gradients and curves.

11. Whether, in the lines proposed, the gradients and curves are generally favourable or otherwise, and the steepest gradient exclusive of the inclined planes above referred to, and the smallest radius of a curve.

Length and gauge of line.

12. The length of the main line of the proposed railway, and of its branches respectively, and on what gauge it is proposed to be constructed.

Whether passing any roads on a level.

13. Whether it be intended that the railway should pass on a level any turnpike-road or highway, and if so, to call the particular attention of the House to that circumstance.

Amount of estimates, and whether adequate.

14. The amount of the estimates of the cost or other expenses to be incurred up to the time of the completion of the railway, and whether they appear to be supported by evidence, and to be fully adequate for the purpose.

Number of assents, dissents, and neuters.

15. The number of assents, dissents, and neuters upon the line, and the length and amount of property belonging to each class traversed by the said railway, distinguishing owners from occupiers; and in the case of any bill to vary the original line, the above particulars with reference to such parties only as may be affected by the proposed deviation.

Engineers examined.

16. The name of each engineer examined in support of the bill, and of any examined in opposition to it.

Allegations of

17. The main allegations of every petition which may have been

referred to the committee in opposition to the preamble of the bill, or to any of its clauses; and whether the allegations have been considered by the committee, and if not considered, the cause of their not having been so. petitions in opposition.

And the committee shall also report generally as to the fitness, in an engineering point of view, of the projected line of railway, and any circumstances, which, in the opinion of the committee, it is desirable the House should be informed of. Fitness in an engineering point of view, and any other circumstances.

100 to 111 inclusive do not apply to Railway Bills.

III. *Orders regulating the Practice of the House with regard to Private Bills.*

112. That no private bill be brought into this House, but upon a petition first presented, with a printed copy of the proposed bill annexed: and that such petition be signed by the parties, or some of them, who are suitors for the bill, and be duly indorsed by the examiner of petitions for private bills. 112. Petition for bill, how to be signed.

113. That all petitions for private bills be presented to the House on or before a day to be appointed by the House at the commencement of every session. 113. When petitions to be presented.

114. That all petitions for additional provision in private bills, with the proposed clauses annexed, and all estate bills brought from the House of Lords after having been read a first time, be referred to the examiner of petitions for private bills. 114. Certain petitions to be referred to examiner of petitions.

115. That all reports of the examiner of petitions for private bills be referred to the select committee on standing orders. 115. Reports of examiner to be referred to committee on standing orders.

116. That all petitions for leave to dispense with any of the sessional orders of the House relating to private bills, and also all petitions for the re-insertion of petitions for private bills in the examiner's list, be referred to the select committee on standing orders. 116. Petitions to dispense with sessional orders, &c., to be referred to committee on standing orders.

117. That every private bill, printed on paper, of a size to be determined upon by Mr. Speaker, be presented to the House, with a cover of parchment attached to it, upon which the title of the bill is to be written; and the short title of the bill, as first entered on the votes, shall correspond with that at the head of the advertisement, and shall not be changed unless by special order of the House. 117. Printed bill to be presented to the House.

118. Rates, &c., to be inserted in italics.

118. That the proposed amount of all rates, tolls, and other matters heretofore left blank in any private bill when presented to the House, be inserted in *italics* in the printed bill.

119. Bills to be printed before first reading.

119. That every private bill (except name bills) be printed; and printed copies thereof delivered to the door-keepers for the use of the members, before the first reading.

120. Time between first and second reading.

120. That there be three clear days between the first and second reading of every private bill.

121. Name of bill to be written on petitions.

121. That on every petition presented to this House, relating to any private bill before the House, the name or short title by which such bill is entered in the votes be written at the beginning thereof; and whether such petition be in favour or against the bill.

122. Second reading.

122. That no private bill be read a second time, until after the expiration of two calendar months from the day the last notice shall have been given in the newspaper.

123. Breviate of bill.

123. That a breviate of every private bill (except divorce, name, and estate bills, brought from the House of Lords, and not relating to crown, church, or corporation property, or property held in trust for public or charitable purposes) be prepared under the direction of Mr. Speaker, and that such breviate shall contain a statement of the object of the bill, and a summary of the proposed enactments, and shall state any variation from the general law which will be effected by the bill.

124. Breviate to be printed.

124. That no private bill be read a second time until three clear days after the breviate thereof shall have been laid on the table of the House, and have been printed.

125. Fees to be paid.

125. That no private bill or clause, for the particular interest or benefit of any person or persons, county or counties, corporation or corporations, or body or bodies of people, be read a second time, unless fees be paid for the same.

126. When bills to be referred to committee of selection.

126. That every private bill, not being a divorce bill, after having been read a second time and committed, shall be referred to the committee of selection; and every divorce bill shall be referred to the select committee on divorce bills.

127. Time between second reading and sitting of committee.

127. That there be seven clear days between the second reading of every private bill and the sitting of the committee thereupon.

128. Reports of Board of Trade to be referred.

128. That, in the case of railway bills, if any report made under the authority of the Board of Trade upon any bill, or the objects thereof, be laid before the House, such report shall be referred to the committee on the bill.

129. That the report upon every private bill ordered to be printed as amended in committee, shall lie upon the table. 129. Report of bill to lie on table.

130. That a breviate of the amendments made in every committee on a private bill be submitted to the chairman of the committee of Ways and Means, and also laid upon the table of the House at least the day previous to the consideration of the report of such bill. 130. Breviates of bills as amended in committee.

131. That every private bill, as amended in committee, excepting in the cases wherein the committee shall report the amendments to be merely verbal or literal, be printed at the expense of the parties applying for the same; and be delivered to the door-keepers for the use of the members, three clear days at least before the consideration of the report. 131. Amended bill to be printed.

132. That when it is intended to bring up any clause, or to propose any amendment on the report, or the consideration of the report, or on the third reading of any private bill, the same be submitted to the chairman of the committee of Ways and Means, on the day on which notice is given thereof in the Private Bill Office, and that no such clause or amendment be offered in the House, unless the same shall have been so submitted to the chairman of the committee of Ways and Means, and he shall have reported to the House, whether, in his opinion, the clause or amendment be such as ought or ought not to be entertained by the House, without referring the same to the select committee on standing orders. 132. Amendments to be submitted.

133. That when any clause or amendment is offered upon the report, or the consideration of the report, or the third reading of any private bills, such clause or amendment shall be printed: and when any clause is proposed to be amended, it shall be printed in extenso, with every addition or substitution in different type, and the omissions therefrom included in brackets. 133. Clauses and amendments to be printed.

134. That when any clause or amendment upon the report, or the consideration of the report, or the third reading of any private bill, shall have been referred to the select committee on standing orders, no further proceeding on either of such stages shall be had until the report of the said select committee shall have been brought up. 134. When referred, no further proceeding until report is made.

135. That in order to afford opportunity for the proper discussion of the reports on railway bills included in the second class, this House will upon every Tuesday and Thursday proceed to the consideration of reports on such bills. 135. Reports when to be discussed.

136. That no private bill shall pass through two stages on one and the same day, without the special leave of the House. 136. Bill not to proceed two stages on same day.

137. Notice of motion for dispensation with any order.

137. That (except in cases of urgent and pressing necessity) no motion be made to dispense with any sessional or standing order of the House without due notice thereof.

IV. *The Orders regulating the Practice in the Private Bill Office.*

138. Private Bill Office and register.

138. That a book, to be called "The Private Bill Register," be kept in a room, to be called "The Private Bill Office," in which book shall be entered by the clerks appointed for the business of that office, the name, description, and place of residence of the parliamentary agent in town, and of the agent in the country (if any) soliciting the bill; and all the proceedings, from the petition to the passing of the bill:—such entry to specify, briefly, each day's proceeding before the examiners of petitions respectively; or in the House, or in any committee to which the bill may be referred; the day and hour on which the examiners or the committee is appointed to sit; the day and hour to which the proceedings before such examiners or committee may be adjourned, and the name of the clerk attending the same. Such book to be open to public inspection daily, in the said office, between the hours of ten and six.

139. Plans, &c., to be lodged in Private Bill Office.

139. That all plans, sections, books of reference, lists of owners and occupiers, estimates, copies of the subscription contracts, and declarations required by the standing orders of the House, be lodged in the Private Bill Office; and that the receipt thereof be acknowledged accordingly, by one of the clerks of the said office, upon the said documents, and upon the petition, when deposited.

140. Copy of bill to be deposited in Private Bill Office.

140. That every petition for a private bill, headed by a short title descriptive of the undertaking, corresponding with that at the head of the advertisement, with a declaration, signed by the agent, and copy of the bill annexed, be deposited in the Private Bill Office on or before the 31st day of December; and that such petition, bill, and declaration be open to the inspection of all parties.

141. Declaration of agent to be annexed to petition.

141. That such declaration shall state to which of the three classes of bills such bill in the judgment of the agent belongs; and if the proposed bill shall give power to effect any of the following objects, that is to say:—

Power to take any lands or houses compulsorily, or to extend the time granted by any former act for that purpose:

Power to levy tolls, rates, or duties, or to alter any existing tolls, rates, or duties; or to confer, vary, or extinguish any exemption from payment of tolls, rates, or duties, or any other right or privilege:

Power to amalgamate with any other company, or to sell or lease their undertaking, or to purchase or take on lease the undertaking of any other company:

Power to interfere with any crown, church, or corporation property, or property held in trust for public or charitable purposes:

Power to make a burial-ground:

Power to relinquish any part of a work authorised by a former act:

Power to divert into any intended cut, canal, reservoir, aqueduct, or navigation, or into any intended variation, extension, or enlargement thereof respectively, any water from any existing cut, canal, reservoir, aqueduct, or navigation, whether directly or derivatively, and whether under any agreement with the proprietors thereof, or otherwise:

Power to make, vary, extend, or enlarge any cut, canal, reservoir, aqueduct, or navigation.

Power to make, vary, extend, or enlarge any railway.

The said declaration shall state which of such powers are given by the bill, and shall indicate in which clauses of the bill (referring to them by their number) such powers are given, and shall further state that the bill does not give power to effect any of the objects enumerated in this order, other than those stated in the declaration.

If the proposed bill shall not give power to effect any of the objects enumerated in the preceding order, the said declaration shall state that the bill does not give power to effect any of such objects.

The said declaration shall also state that the bill does not give any powers, other than those included in the notices for the bill.

And that a copy of such declaration be deposited at the office of the Board of Trade.

142. That a list of all petitions for private bills be kept in the Private Bill Office in the order of their deposit, according to regulations to be made by Mr. Speaker. 142. List of petitions to be kept.

143. That the chief examiner shall give at least *seven* clear days' notice in the Private Bill Office of the day appointed for the examination of each petition. 143. Notice to be given of examination of petitions.

144. Examination book.

144. That, after each private bill has been read the first time, its name (or short title) shall be copied by the clerks of the Private Bill Office, from the clerk's minute book of the day, into a separate book, to be called "The Examination Book," wherein shall be noted the number of such bill, according to the priority of its being read, and the date of the day of such first reading.

145. Custody of bills.

145. That every private bill, after it has been read the first time and the title copied and examined for the votes, be in the custody of the clerks of the Private Bill Office, until laid upon the table for the second reading; and when committed, be taken by the proper committee clerk into his charge, till reported.

146. Examination of bill and breviate.

146. That, between the first and second reading of every private bill, every such bill shall, according to its priority, be examined, with all practicable dispatch, by the clerks of the Private Bill Office, as to its conformity with the rules and standing orders of the House; and if *not* in due form, the examining clerk shall specify thereon the page in which any irregularity occurs, and shall enter the day of such examination, together with his own name, in the examination book.

147. Notice of second reading.

147. That three clear days' notice in writing be given by the agent for the bill, to the clerks in the Private Bill Office, of the day proposed for the second reading of every private bill.

148. Notice of meeting of committee on the bill.

148. That seven clear days' notice be given by the clerk to the committee of selection to the clerks in the Private Bill Office of the day and hour appointed for the meeting of the committee on every private bill that shall have been referred to such committee:—That, in the case of bills not referred to the committee of selection, seven clear days' notice, and in the case of a re-committed bill, three clear days' notice, be given by the agent for the bill, to the clerks in the Private Bill Office, of the day and hour appointed for the meeting of the committee, on every private bill; and that all the proceedings of any committee of which such notice shall not have been given, be void.

149. Filled-up bill, to be deposited in Private Bill Office.

149. That a filled-up bill, signed by the agent for the bill, as proposed to be submitted to the committee on the bill, and in the case of a re-committed bill, a filled-up bill, as proposed to be submitted to the committee on re-committal, be deposited in the Private Bill Office one clear day before the meeting of the committee on every private bill; and that all parties shall be entitled to a copy thereof, upon payment of the charges for making out amendments of such bill.

150. That notice, in writing, be given by the clerk to the committee of selection, to the clerks in the Private Bill Office, of the postponement of the first meeting of any committee on a private bill, which shall have been referred to such committee, on the day on which such postponement is made; and that in the case of bills not referred to the committee of selection, one clear day's notice be given by the agents for the bill to the clerks in the Private Bill Office of such postponement. 150. Notice of postponement of first meeting.

151. That notice, in writing, be given by the committee clerk to the clerks in the Private Bill Office, of the day and hour to which each committee is adjourned. 151. Notice of adjournment.

152. That one clear day's notice, in writing, be given by the agent for the bill, to the clerks in the Private Bill Office, of the day proposed for the report of every private bill, and also for the consideration of the report of every private bill ordered to lie upon the table. 152. Notice of report, &c.

153. That the committee clerk, after the report is made out, do deliver into the Private Bill Office a printed copy of the bill, with the written amendments made in the committee; in which bill, all the clauses added by the committee shall be regularly marked in those parts of the bill wherein they are to be inserted. 153. Bill as amended to be delivered in.

154. That when it is intended to bring up any clause, or to propose any amendment on the report, or the consideration of the report, or on the third reading of any private bill, notice shall be given thereof, in the Private Bill Office, on the day previous to such report, or consideration of the report, or third reading. 154. Notice to be given of clauses, &c.

155. That one clear day's notice, in writing, be given by the agent for the bill, to the clerks in the Private Bill Office, of the day proposed for the third reading of every private bill; and that no such notice be given until after the bill to which it relates shall have been reported, or the report thereof considered. 155. Notice of third reading.

156. That the amendments (if any) which are made upon the report or consideration of the report, and on the third reading of any private bill, and also such amendments made by the House of Lords as shall have been agreed to by this House, be entered by one of the clerks in the Private Bill Office, upon the printed copy of the bill as amended in committee; which clerk shall sign the said copy so amended, in order to its being deposited and preserved in the said office. 156. Amendments on report, &c.

157. That to insure the accuracy of the ingrossment of all private bills, the clerk of the House be required to provide a sufficient number of clerks, to be called "Examiners of Ingrossments." 157. Examination of ingrossments.

158. Certificate of examination.

158. That no private bill be read a third time until a certificate is indorsed upon the paper bill, and signed by one or more of the examiners of ingrossments, declaring that the ingrossment thereof has been examined and agrees with the bill, as amended in committee, and on the consideration of the report.

159. Notice of consideration of Lords' amendments.

159. That, when amendments made by the House of Lords to any private bill sent up to them are to be taken into consideration, notice be given thereof in the Private Bill Office, the day previous to the same being proposed to be taken into consideration.

160. Time for delivering notices.

160. That all notices required to be given in the Private Bill Office be delivered in the said office before six of the clock in the evening of any day on which the House shall sit, and before two of the clock on any day on which the House shall not sit; and that after any day on which the House shall have adjourned beyond the following day, no notice shall be given for the first day on which it shall again sit.

161. Daily list of committees' sitting.

161. That the clerks in the Private Bill Office do prepare, daily, lists of all private bills, and petitions for private bills upon which any committee or examiner is appointed to sit; specifying the hour of meeting; and the room where the committee or examiner shall sit; and that the same be hung up in the lobby of the House.

162. Plans, &c., to be verified as Mr. Speaker shall direct.

162. That every plan, and book of reference thereto, which shall be certified by the Speaker of the House of Commons, in pursuance of any act of Parliament, shall previously be ascertained, and verified in such manner as shall be deemed most advisable by the Speaker, to be exactly conformable in all respects to the plan and book of reference which shall have been signed by the chairman of the committee upon the bill.

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4. *Standing Orders of the* HOUSE OF LORDS, A. D., 1847, *so far as they relate to Railway Bills and the Committees to which they are referred* (a).

First class does not relate to railway bills.

Second class (inter alia) refers to bills for "making, maintaining, varying, extending, or enlarging any railway."

Third class refers to bills "continuing or amending any act passed

(a) The Standing Orders to 218 inclusive, are not applicable to railway bills.

for any of the purposes included in this or the two preceding classes, where no further work than such as was authorised by a former act is proposed to be made."

Emendat. per Ord. 11 *Augusti*, 1842.

219. Ordered, by the Lords Spiritual and Temporal in Parliament assembled,— 219.

That all the standing orders relative to railway bills heretofore in existence be repealed.

The Committee for Standing Orders.

That, at the commencement of every session of Parliament, a standing order committee shall be appointed, consisting of forty lords, besides the chairman of the committees of the House of Lords, who shall be always chairman of such standing order committee. To be appointed every session.

That three of the lords so appointed, including the chairman, shall be a quorum. Quorum.

That, previous to the second reading of any private bill relating to such railways as are included in the second class, and previously to the sitting of the committee on any opposed bill included in any of the three classes above mentioned, except bills for such railways as aforesaid, such bill shall be referred to the standing order committee, before which the compliance with such of the standing orders as are hereafter required to be proved before the standing order committee shall be proved. Compliance with the Standing Orders in the case of railway and opposed bills to be proved before committee.

That any parties shall be at liberty to appear, and to be heard by themselves, their agents, and witnesses, upon any petition which may be referred to the standing order committee, complaining of a non-compliance with the standing orders, provided the matter complained of be specifically stated in such petition, and that such petition be presented on or before the second day after the introduction of the bill into this House. Parties may be heard upon petition, provided the matter complained of be specifically stated.

That such committee shall report whether the standing orders have been complied with; and if it shall appear to the committee that they have not been complied with, they shall state the facts upon which their decision is founded, and any special circumstances connected with the case, and also their opinion as to the propriety of dispensing with any of the standing orders in such case. Committee to report whether Standing Orders have been complied with.

That three clear days' notice be given of the meeting of such committee. Notice of meeting.

That no committee on any private bill relating to such railways as Committee on railway and op-

posed bills not to examine into compliance with Standing Orders.

are included in the second class, or of any other bill included in any of the three classes above mentioned which shall be opposed, shall have power to examine into the compliance with the standing orders, the compliance with which is required to be proved before the standing order committee.

Committee upon Opposed Bills (*a*).

That no opposed private bill included in any of the three classes of bills hereinbefore mentioned be referred to an open committee.

That every such private bill which shall be opposed be referred to a select committee of five, who shall choose their own chairman.

That every one of such committee of five do attend the proceedings of the committee during the whole continuance thereof.

That no lord who is not one of the five do take any part of the proceedings in the committee.

That the lords be exempted from serving on the committee on any private bill wherein they shall have any interest.

That lords be excused from serving for any special reasons to be approved of in each case by the House.

That the chairman of the committees and four other lords to be named by the House be appointed a committee to select and propose to the House the names of the five lords to form a select committee for the consideration of each such opposed private bill.

That the select committee of five be not named to the House on the same day on which the opposed private bill is read a second time.

That the committee to whom any such opposed private bill is committed shall not meet later than eleven o'clock every morning, and sit till four, and shall not adjourn at an earlier hour without specially reporting the cause of such adjournment to the House at its next meeting, nor adjourn over any days except Saturday and Sunday, Christmas-day and Good Friday, without leave of the House.

That if any member of such committee is prevented from continuing his attendance, the committee shall adjourn, and report the cause of such member absenting himself to the House at its next meeting, and shall not resume its sittings without leave of the House.

Die Martis, 23 Junii, 1840.

ORDERED, That the lord appointed to take the chair in all commit-

(*a*) See No. 234, sect. 3, post.

tees be at liberty, in any case on which he shall think fit, to report to the House his opinion, that any unopposed bill on which he shall sit as chairman should be proceeded with as an opposed bill.

Die Jovis, 8 Augusti, 1844.

ORDERED, That in case of railway bills, if any report, made under the authority of the Board of Trade, upon any bill or the objects thereof, be laid before the House, such report shall be referred to the committee on the bill.

Die Jovis, 19 Martii, 1846.

ORDERED, That no petition praying to be heard upon the merits against any second-class railway bill shall be received by this House, unless the same be presented on or before the day on which such bill shall be read a second time.

Die Jovis, 16 Augusti, 1838.

220. *Standing Orders, the Compliance with which must be proved before the Standing Order Committee in all Bills for Railways included in the Second Class, and in any other Bill included in any of the Three Classes which may be opposed, and before the Committee on the Bill in any other Case.*

ORDERED,—

Notices of application.

1. That notices shall be given in all cases where application is intended to be made for a bill relating to the subjects included in any of the three classes above mentioned.

Notices to be published.

2. That such notices shall be published in three successive weeks in the months of October and November, or either of them, immediately preceding the session of Parliament in which application for the bill shall be made, in the London, Edinburgh, or Dublin Gazette, as the case may be, and in some one and the same newspaper of the county in which the city, town, or lands to which such bill relates shall be situate; or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto; or if such bill do not relate to any particular city, town, or lands, in the London, Edinburgh, or Dublin Gazette only, as the case may be.

Intention to purchase lands or houses, or to levy or alter tolls, to be stated.

3. That, if it be the intention of the parties applying for a bill to obtain powers for the compulsory purchase of lands, or houses, or to levy any tolls, rates, or duties, or to alter any existing tolls, rates, or

duties, or to confer, vary, or extinguish any exemptions from payment of tolls, rates, or duties, the notices shall specify such intention.

Application to be made to owners, lessees, and occupiers, and lists made.

4. That, on or before the 31st day of December immediately preceding the application for a bill by which any lands or houses are intended to be taken, or an extension of the time granted by any former act for that purpose is sought for, application in writing (and in cases of bills included in the second class, in the form, as near as may be, set forth in the Form A. (*a*)) be made to the owners or reputed owners, lessees or reputed lessees, and occupiers, either by delivering the same personally, or by leaving the same at their usual place of abode, or, in their absence from the United Kingdom, with their agents respectively, of which application the production of a written acknowledgment by the party applied to shall, in the absence of other proof, be sufficient evidence; and that separate lists be made of such owners, lessees, and occupiers, distinguishing which of them have assented, dissented, or are neuter in respect thereto.

The service of applications to owners, &c., may be proved by agent.

5. That the service of every application required to be made to the owners or reputed owners, lessees or reputed lessees, and occupiers, by the fourth paragraph of the said standing order, may, unless a petition complaining of the want of due service of such application shall have been referred to the standing order committee, be proved by the evidence of the agent or solicitor for the bill, stating that he gave directions for the service of such application in the manner and within the time required by the standing orders, and that he believes that such application was so served; but in case the standing order committee shall not be satisfied with the evidence of the agent or solicitor, the service of such application shall be proved in the usual manner.

Proceedings where bills empower company to execute work other than that for which it was established.

6. That no bill to empower any company already constituted by act of Parliament to execute, undertake, or contribute towards any work other than that for which it was originally established, shall be allowed to proceed unless the committee on standing orders, when such bill shall be referred to that committee, or unless the committee on the bill when the compliance with the standing orders is to be proved before such committee, shall have specially reported,—

1st. That a draft of the proposed bill was submitted to a meeting of the proprietors of such company at a meeting held specially for that purpose:

2nd. That such meeting was called by advertisement inserted for

(*a*) The Form A. here referred to, is in substance similar to the form required by the Commons' Orders; see *ante*, 35.

four consecutive weeks in the newspapers of the county or counties wherein such new works were proposed to be executed, or if there are no newspapers published in such county or counties, then in that of the nearest county wherein a newspaper is published:

3rd. That such meeting was held at a period not earlier than seven days after the last insertion of such advertisement:

4th. That at such meeting the draft of the proposed bill was submitted to the proprietors then present, and was approved of by at least three-fifths of such proprietors.

Emendat. per Ord. 11 *Augusti*, 1842.
Emendat. per Ord. 7 *Augusti*, 1845.
Emendat. per Ord. 13 *Februarii*, 1846.
Emendat. per Ord. 27 *Augusti*, 1846.

Nos. 221 and 222 do not relate to railway bills.

Further Orders with regard to Bills of the Second Class, the Compliance with which is to be proved as hereinbefore mentioned. 223.

ORDERED,—

1. That all notices shall contain a description of all the termini, together with the names of the parishes, townships, townlands, and extra-parochial places from, in, through, or into which the work is intended to be made, maintained, varied, extended, or enlarged, and shall state the time and place of deposit of the plans, sections, or books of reference respectively with the clerks of the peace, parish clerks, schoolmasters, town clerks, and clerks of the union, as the case may be.

Notices to contain names of parishes, &c., and to state the time and place of deposit of plans, &c.

2. That all notices (with respect to bills included in the second class of bills hereinbefore mentioned) shall also be given at the general quarter session of the peace which shall have been holden for every and each county, riding, or division in or through which the work shall be made, maintained, varied, extended, or enlarged, at Michaelmas or Epiphany preceding the session of Parliament in which such application is intended to be made, by affixing such notice on the door of the sessions-house of each and every such county, riding, or division where such general quarter session shall be holden; save and except as to any bill for such purposes in Scotland; in which case, instead of affixing such notices on the door of the sessions-house,

Notice to be affixed on door of sessions-house, &c.

such notices shall be written or printed on paper and affixed to the church door of the parish or parishes in or through which such work is intended to be made, maintained, varied, extended, or enlarged, for three successive Sundays, in the months of October and November, or either of them, immediately preceding the introduction into Parliament of the bill for which such application is intended to be made.

Duplicate plans and sections to be deposited with clerks of the peace, &c.

3. That a plan, and also a duplicate of such plan, on a scale of not less than four inches to a mile, be deposited for public inspection at the office of the clerk of the peace for every county, riding, or division in England or Ireland, or in the office of the principal sheriff clerk of every county in Scotland, in or through which the work is proposed to be made, maintained, varied, extended, or enlarged, on or before the 30th day of November, unless such day shall happen on a Sunday, and if the same shall happen on a Sunday, then on or before the 29th day of November immediately preceding the session of Parliament in which application for the bill shall be made; which plans shall describe the line or situation of the whole of the work, and the lands in or through which it is to be made, maintained, varied, extended, or enlarged, or through which every communication to or from the work shall be made, together with a book of reference containing the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of such lands respectively; and in the case of bills relating to turnpike roads, cuts, canals, reservoirs, aqueducts, and railways, a section and duplicate thereof, as hereinafter described, shall likewise be deposited with such plan and duplicate.

Lands within deviation to be on plan. Buildings, &c. on enlarged scale.

4. That, where it is the intention of the parties to apply for power to make any lateral deviation from the line of the proposed work, the limits of such deviation shall be defined upon the plan, and all lands included within such limits shall be marked thereon; and that in all cases, excepting where the whole of such plan shall be upon a scale of not less than a quarter of an inch to every 100 feet, an additional plan of any building, yard, court-yard, or land within the curtilage of any building, or of any ground cultivated as a garden, either on the original line or included within the limits of the said deviation, shall be laid down on the said plan, or on the additional plan deposited therewith, upon a scale of not less than a quarter of an inch to every 100 feet.

Scale of section.

5. That the section shall be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to every 100

1.

hat the clerks of the peace or sheriff clerks, or their respective es, do make a memorial in writing upon the plans, sections, oks of reference so deposited with them, denoting the time at the same were lodged in their respective offices, and do at all ible hours of the day permit any person to view and examine the same, and to make copies or extracts therefrom; and that the two plans and sections so deposited be sealed up and re- in the possession of the clerk of the peace or sheriff clerk until for by order of one of the two Houses of Parliament. (See c. 83, post, App., 3).

Clerks of peace, &c. to indorse plans, &c. Inspection and fee.

hat, on or before the 31st day of December, or in case such day appen on a Sunday, on or before the 30th day of December, a f so much of the said plans and sections as relates to each parish hrough which the work is intended to be made, maintained, , extended, or enlarged, (see fig. 5), together with a book of ice thereto, shall be deposited with the parish clerk of each such in England, the schoolmaster of each such parish in Scotland, royal burghs with the town clerk), and the clerk of the union which such parish is included in Ireland. (See 1 Vict. c. 83, App., 3).

So much of the plans, &c. as relates to each parish to be deposited with the parish clerk, &c.

That, on or before the 31st day of December, or in case such day happen on a Sunday, on or before the 30th day of December, a of the said plans, sections, and books of reference shall be de- d in the office of the clerk of the Parliaments.

Copy of the plans, &c. to be deposited with the clerk of the Parliaments.

That, where any alteration shall have been made, or shall be d by the parties to be made, after the introduction of the bill

Plans and sections of alterations made subse-

the sheriff clerk of every county in Scotland, in which such alteration is proposed to be made; and a copy of such plan and section, so far as relates to each parish, together with a book of reference thereto, shall be deposited with the parish clerks of each such parish in England, the schoolmaster of each such parish in Scotland, (or in royal burghs with the town clerk), and the clerk of the union within which such parish in Ireland is included, in which such alteration is intended to be made, one month previously to the introduction of the bill for making such work into this House; and the intention to make such alteration shall be published in manner before directed in the London, Edinburgh, or Dublin Gazette, as the case may be, and some one and the same newspaper of the county in which such alteration shall be situate, or if there be no such paper printed therein, then in the newspaper of some county adjoining thereto, for three successive weeks previously to the introduction of the bill into this House; and personal application, with a notice in writing in the form hereinbefore mentioned, shall be made to the owners or reputed owners, lessees or reputed lessees, or, in their absence from the United Kingdom, to their agents respectively, and to the occupiers of lands through which any such alteration is intended to be made; and the consent of such owners or reputed owners, lessees or reputed lessees, and occupiers, to the making of such alteration, shall be proved to the satisfaction of the committee before whom the compliance with the standing orders shall be proved.

Plans and sections of alterations to be deposited with the clerk of the Parliaments.

10. That, previous to any bill for making any work, the bill for which shall be included in the second class of bills hereinbefore mentioned, being brought to this House from the Commons, in which any alteration has been made in its progress through Parliament, a map or plan and section of such work, shewing any variation, extension, or enlargement which is intended to be made in consequence of such alteration, shall be deposited in the office of the clerk of the Parliaments; and that such map or plan and section shall be on the same scale and contain the same particulars as the original map or plan and section of the said work.

Standing Orders as to the deposit of plans, &c. with clerks of the peace, &c. to be printed, and a copy delivered with the plan.

11. That copies of so much of the standing orders of this House on private bills as relates to the deposit of plans, sections, books of reference, and other books and writings, or extracts or copies of or from the same, with the clerks of the peace of counties in England or Ireland, sheriff clerks in Scotland, parish clerks in England, schoolmasters in Scotland, town clerks of royal burghs in Scotland, clerks

facts, and setting forth the means by which funds are to be obtained for executing the work, and signed by the party or agent soliciting the bill, together with an estimate of the probable amount of such rates, duties, or revenues, signed by the person making the same, may be substituted in lieu of the subscription contract, and in addition to the estimate of the expense.

Contents of subscription contract and deposit of money.

4. That every subscription contract shall contain the christian and surname, description and place of abode of every subscriber, his signature to the amount of his subscription, with the amount which he has paid up, and the name of the party witnessing such signature, and the date of the same respectively; and that, as respects all bills except railway bills, it be proved to the satisfaction of the committee before whom the compliance with the standing orders shall be proved, that a sum equal to one-twentieth part of the amount subscribed, and as respects railway bills a sum equal to one-tenth of the amount subscribed, has been deposited with the Court of Chancery in England, if the work is intended to be done in England, or with the Court of Chancery in England, or the Court of Exchequer in Scotland, if such work is intended to be done in Scotland, or with the Court of Chancery in Ireland, if such work is intended to be done in Ireland: Provided that the above order, so far as respects the sum of money to be deposited, shall not apply to any railway bills which have been before Parliament during the present session, and which may again be introduced in the next session; but with respect to such bills a sum equal to one-twentieth of the amount subscribed shall be deposited as before provided in cases of bills other than railway bills. (See 1 & 2 Vict. c. 117).

Contract to be entered into subsequent to close of previous session.

5. That no subscription contract, as respects railway bills, shall be valid unless it be entered into subsequent to the commencement of the session of Parliament previous to that in which application is made for the bill to which it relates; nor, as respects other bills, unless it be entered into subsequently to the close of the session previous to that in which application is made for the bill to which it relates; nor shall any subscription contract be valid unless the parties subscribing to it bind themselves, their heirs, executors, and administrators, for the payment of the money so subscribed.

Subscription contract to be printed and deposited.

6. That, previous to the second reading of the bill, copies of the subscription contract, with the names of the subscribers arranged in alphabetical order, and the amount of the deposit respectively paid by each such subscriber, or where a declaration and estimate of the pro-

to a mile, with the line of railway delineated thereon, so as to shew its general course and direction, shall on or before the same day be deposited in the office of the railway department of the Board of Trade.

Copy of bill to be deposited at the Board of Trade.

2. That, in the case of railway bills, a copy of every bill as brought into the House of Lords be deposited in the office of the railway department of the Board of Trade.

Distances to be marked on plan, and memorandum of curves.

3. That the plan shall exhibit thereon the distances in miles and furlongs from one of the termini, and a memorandum of the radius of every curve not exceeding one mile in length shall be noted on the plan in miles, furlongs, and chains.

Line of railway to correspond with upper surface of rails.

4. That in every section of a railway the line marked thereon shall correspond with the upper surface of the rails.

Vertical measure to be marked at change of gradients.

5. That distances on the datum line shall be marked in miles and furlongs to correspond with those on the plan; that a vertical measure from the datum line to the line of the railway shall be marked in feet and inches at each change of the gradient or inclination; and that the proportion or rate of inclination between each such change shall also be marked.

Height of railway over or under surface to be marked at every crossing of a road, &c.

6. That the height of the railway over or under the surface of every turnpike road, public carriage road, navigable river, canal, or railway or junction with a railway, and the height and span of every arch of all bridges and viaducts, shall be marked in figures at every crossing thereof; and the extreme height over or under the surface of the ground shall be marked for every embankment and cutting; and if any alteration in the present level or rate of inclination of any turnpike road, carriage road, or railway be intended, then the same shall be stated on the said section, and each numbered; also that cross sections in reference to the said numbers, on a horizontal scale of one inch to every three hundred and thirty feet, and on a vertical scale of one inch to every forty feet, shall be added to explain the nature of such alterations more clearly.

Tunnelling and arching to be marked.

7. That where tunnelling as a substitute for open cutting, or a viaduct as a substitute for solid embankment, be intended, the tunnelling shall be marked by a dotted line on the plan, and shall also be marked on the section; and the viaduct shall be marked on the section.

Emendat. per Ord. 11 *Augusti*, 1842.

Emendat. per Ord. 8 *Augusti*, 1844.

Emendat. per Ord. 7 *Augusti*, 1845.

Nos. 228 to 231 inclusive do not apply to railways.

Whether railway be a complete line or part of a more extended plan.

2. Whether the proposed railroad be a complete and integral line between the termini specified, or a part of a more extended plan now in contemplation, and likely to be hereafter submitted to Parliament, and to what extent the calculations of remuneration depend on such contemplated extension of the line.

Whether any report from the Board of Trade has been referred.

3. That, in the case of a railway bill, the committee report specially, whether any report from the Board of Trade in regard to the bill, or the objects thereby proposed to be authorised, has been referred by the House to the committee, and, if so, whether any and what recommendations contained in such report have been adopted by the committee, and whether any and what recommendations contained in such report have been rejected.

Planes to be worked by assistant engines.

4. To state what planes on the railway are proposed to be worked, either by assistant engines, stationary or locomotive, with the respective lengths and inclinations of such planes.

Engineering difficulties.

5. To advert to any peculiar engineering difficulties in the proposed line, and to report the manner in which it is intended they should be overcome.

Size and means of ventilation of tunnels.

6. To state the length, breadth, and height, and means of ventilation of any proposed tunnels, and whether the strata through which they are to pass are favourable or otherwise.

Whether the gradients and curves are favourable.

7. To state whether, in the lines proposed, the gradients and curves are generally favourable, or otherwise, and the steepest gradient, exclusive of the inclined planes above referred to, and the smallest radius of a curve.

Length of the main line and of the branches.

8. To state the length of the main line of the proposed line of the railroad, and of its branches respectively.

Fitness in an engineering point of view.

9. To state generally the fitness, in an engineering point of view, of the projected line of railroad.

If any highway to be passed on a level.

10. If it be intended that the railroad should pass on a level any turnpike road or highway, to call the particular attention of the House to that circumstance.

Amount of estimates.

11. To state the amount of the estimates of the cost or other expenses to be incurred up to the time of the completion of the railway, and whether they appear to be supported by evidence, and to be fully adequate for the purpose.

Estimated annual expenses.

12. To state what is the estimated charge of the annual expenses of the railroad when completed, and how far the calculations on which the charge is estimated have been sufficiently proved.

Revenue in refer-

13. Whether the calculations proved in evidence before the com-

Level of roads

2. That, where the level of any road shall be altered in making any railway, the ascent of any turnpike road shall not be more than one foot in thirty feet, and of any other public carriage road not more than one foot in twenty feet, unless a report from some officer of the railway department of the Board of Trade shall be laid before the committee on the bill, recommending that steeper ascents than the above may be allowed, with the reasons and facts upon which such opinion is founded, and the committee shall report in favour of such recommendation; and that a good and sufficient fence of four feet high at the least shall be made on each side of every bridge which shall be erected.

Railways not to cross highways on same level.

3. That no railway whereon carriages are propelled by steam, or by atmospheric agency, or drawn by ropes in connexion with a stationary steam-engine, shall be made across any turnpike road or other public carriage-way on the level, unless the committee on the bill report that such a restriction ought not to be enforced, with the reasons and facts upon which their opinion is founded.

Time to be limited for the completion of works.

4. That, in case the work intended to be carried into effect under the authority of the bill shall not have been completed, so as to answer the objects of such bill, within a time to be limited, all the powers and authorities thereby given shall thenceforth cease and determine, save only as to so much of such work as shall have been completed within such time, with such provisions and qualifications as the nature of the case shall require.

Clauses to be inserted in bills.

V. That in all such bills there be inserted the following clauses (except where the same objects shall have been provided for in some act applicable to the undertaking intended to be authorised by the bill):—

Railway not to be proceeded with till certain plans, &c. deposited.

1. And be it enacted. [Here follow in substance sects. 8 and 9 of 8 & 9 Vict. c. 20, post, App., 160. It is therefore unnecessary to repeat the sections here.]

Limiting deviations from datum line described on the section, &c.

2. And be it enacted. [Here follows in substance sect. 11 of 8 & 9 Vict. c. 20, post, App., 160.]

Arches and viaducts as marked on plan and section to be made, &c.

3. And be it enacted. [Here follows in substance sect. 13 of 8 & 9 Vict. c. 20, post, App., 161.]

Limiting the alteration of curves.

4. And be it enacted. [Here follows in substance sect. 14 of 8 & 9 Vict., post, App., 161.]

Emendat. per Ord. 8 *Augusti*, 1844.

Emendat. per Ord. 7 *Augusti*, 1845.

Emendat. per Ord. 12 *Martii*, 1846.

The following additional standing order, relative to railway and other bills, was agreed to on the 26th of January, 1847 :—

1. That, after any road, or canal, or railway, or dock-bill, shall be read a first time, and before any further proceeding thereupon, there be deposited in the office of the clerk of the Parliament a statement of the length and breadth of the space which is intended or sought to be taken for the proposed works, and to give up which, the consent of the owners of the land has not been obtained; together with the names of such owners, and the height above the surface of all proposed works on the ground of each such owner.

And, also, in the case of railway bills, that a return shall be presented, at the same time, of the names of the owners or occupiers of any houses situated within 300 yards of the proposed works, who shall, on or before the introduction of the bill into this House in the present session, or before the 31st of December, prior to any future session in which the bill shall be introduced into Parliament, have sent to the promoters of the railway their dissent, or any written objections to the railway.

Notices to Parliamentary Agents, applicable to Session 1847.

2. Any petition relating to any railway or other private bill, and intended for presentation by the chairman of the committees, must have an indorsement thereon, stating the name or short title of the bill to which such petition relates, and the name of the agent of the party presenting the said petition; and also stating the name or description of the party petitioning, and whether the said petition is in favour of or against the bill, and also whether the same prays to be heard by counsel or agents; and such petition must be left with Mr. Adam, before 3 o'clock of the day on which it is intended to be presented.

(Signed) *Shaftesbury*, Chairman of Committees.

3. All parties proposing to appear before any committee on a local and personal bill, upon any petition referred to such committee, previously to the meeting of the committee, to enter an appearance by themselves or their agents in the book kept in the committee clerk's office for that purpose; and the appearance of any party before such committee on any day, will be held to continue each subsequent day on which the committee shall sit, unless an entry be made in the above-mentioned book that such appearance is discontinued; but such party shall have liberty to re-appear at any time during the sitting of such committee by again entering an appearance in the said book.

(Signed) *John William Birch*, Clerk Assistant.

4. The chairman of the committees directs, that the agents, on the day on which they give notice of the second reading of a railway bill, do give in to Mr. Adam a written statement as to whether the railway is a competing line or not, and if it be a competing line, the name or names of the railway or railways with which it competes, whether it is opposed or not, and the earliest day upon which the promoters will be ready for the committee on the bill; which statement is to be signed by the agent for the bill.

(Signed) *Shaftesbury*, Chairman of Committees.

that a Board would be required to superintend Railways, "for the purpose of protecting the weak against the strong,

shall begin to act in execution of this act, all the powers, rights, and authority now vested in or exercised by the lords of the committee of her Majesty's Privy Council for Trade and Foreign Plantations, by virtue of the recited acts, or by any other act of Parliament, or otherwise howsoever, with respect to any railway or intended railway, shall be transferred to and vested in and exercised by the commissioners of railways, as fully as if they had been named in the said several acts of Parliament instead of the lords of the said committee; and all provisions of the said acts shall be deemed to apply to the said commissioners instead of the lords of the said committee; and all proceedings now pending before the lords of the said committee, or carried on under their authority, shall be continued and carried on by and before the said commissioners, who shall have and exercise the same powers, rights, and authority in respect of all such proceedings as if they had been originally commenced before the said commissioners."

Sect. 9, after reciting that in some cases railway companies have exceeded the powers given to them under the acts constituting them, or have otherwise acted contrary to the provisions of the said acts, or of the general acts for regulating railways, enacts, "That it shall be the duty of the said commissioners to prevent any such unlawful proceedings, by the exercise of any powers now vested in the lords of the said committee," (see post, 96).

Sec. 10 enacts, "That it shall be the duty of the said commissioners to examine and report to Her Majesty and both Houses of Parliament upon any subject relating to any railway, or proposed railway, which shall be specially referred to them for their opinion by Her Majesty or by either House of Parliament; and in the case of any application to Parliament for any act for making or maintaining any railway, it shall be their duty, if so directed by Her Majesty or by the authority of either House of Parliament, to inquire and report, on local inspection or otherwise,—

"Firstly, Whether there are any lines or schemes competing with the proposed railway:

"Secondly, Whether by such bill it is proposed to take powers for uniting with such railway, or proposed railway, any other railway or canal, or to purchase or lease any railway, canal, dock, road, or other public work, undertaking or easement:

"Thirdly, Whether by such bill it is proposed to constitute any branch railway, or any other work in connexion with the proposed railway:

"Fourthly, Whether any plans, maps, and sections of any such proposed railway, which, pursuant to any order of either House of Parliament, shall have been deposited in their office, are correct, and if not, in what particulars and how far they are incorrect, and whether or not, in the opinion of the commissioners, such errors as they shall find are material to the object for which such plans and sections are required."

Sect. 11 enacts, "That, for the purposes aforesaid, the said commissioners shall be empowered, by themselves, or by such inspectors as they

tived this proposition; and recommended that the Board of Trade should exercise their supervision of Railways in the way of suggestion, rather than of positive regulation.

The next Select Committee, appointed Feb. 5th, 1844, presented six Reports to the House of Commons, within the space of as many months, and the extensive statutory powers given to the Board of Trade, had their origin from the recommendations and suggestions made in these Reports. This Committee state, that they entered upon their inquiries with a strong prepossession against any general interference by the Government in the management and working of Railways, and that they had not seen cause to alter their first impressions upon that subject. But with regard to Railway legislation, they were convinced, that it was alike clear, from reasoning and from experience, that it should thenceforward be subjected to an habitual and effective supervision on the part of the Government.

In another part of the same Report, the Committee observe, "that they were strongly of opinion, that the time had come when Parliament must weigh, and within certain limits decide upon, the policy to be pursued;" and they proceed to recommend "that an efficient supervising power should be constituted on the part of the public, to assist the judgment of the Houses of Legislature, and that general principles should be laid down to guide its proceedings;" and, finally, they recommended that Railway bills should for the future be submitted to the Board of Trade previously to their coming under the notice of Parliament, with regard mainly to the following subjects:—

1. All questions of public safety.

2. All departures from the ordinary usage of Railway legislation, on points where usage has been sufficiently established.

3. All provisions of magnitude which may be novel in their principle, or may involve extended considerations of public policy. For

Railway department of the Board of Trade should be enlarged, and its organisation improved,—and finally resolved, "That it was expedient that all Railway Bills should thenceforward be submitted to the Board of Trade, previously to their introduction into Parliament; and that the various documents and other requisite information connected with each project, and, if necessary, copies of the plans and sections of the line, should be lodged at the Office of the Board of Trade."

The House of Commons adopted this resolution of the Committee, and, by various resolutions, subsequently embodied in the Standing Orders of both Houses of Parliament, it was required that the Board of Trade should be furnished with all necessary information to enable them to exercise their then intended supervision over projected Railway schemes. Thus, when a Report was made by the Board of Trade upon a Railway Bill, it was referred by the House to the Committee on the Bill: and the Committee were required to report specially, whether any Report from the Board of Trade had been received, and if so, whether their recommendations had been adopted or rejected. So, a copy of all plans and books of reference, and a copy of every bill, were directed to be deposited with the Board of Trade.

The result of the foregoing recommendations was, that, during the Session of 1845, the Board of Trade were required, or rather expected, to report upon the numerous and very important Railway schemes which came before Parliament in the course of that Session.

The following Treasury minute, bearing date the 6th of August, 1844, will explain, to some extent, the steps which the Board took to carry into effect the duties imposed upon them:—

Lords read the letter of Mr. Lefevre to Sir George Clerk, dated
ad instant, in which it is proposed that provision should be made
e appointment of two secretaries to the Railway Department
is Board, and of an Assistant Inspector, and the reply of the 5th
st, in which it is stated the approval of these arrangements by
ords of the Treasury.

y Lords are of opinion that they are not competent, without the
f time and experience, to lay down definite and sufficient rules
he future practice of the Railway Department of this Board;
they have decided upon the following general instructions (sub-
of course, to reconsideration hereafter, if in any particulars they
ld be found inapplicable or inconvenient) with respect to—

1. The constitution of a Board for the purpose of transacting railway business.
2. The preparation of minutes and reports.
3. The provisions to be made for obtaining adequate and early information.

. My Lords are of opinion that, for the adequate and satisfactory
harge of the duties which, as is now proposed, will devolve upon
s committee, it is desirable that a distinct Board should be consti-
ed in the department for the despatch of railway business, and
t such business shall be settled by written minutes, in the same
nner as the ordinary business of this committee.

The President, or Vice-President of the committee, will act as the
d of the Board, and the remaining members of it will act as his ad-
ers in all its transactions, and subject to his controlling authority.
The ordinary members of the Board will be, besides the inspector-
neral, and, in his absence, the assistant inspector, the superinten-
nt and the joint secretaries.

2. Every minute of the Board upon a railway scheme, and every
ort upon a railway bill, to have the signatures of,

First, the President or Vice-President of this committee; and,

Secondly, three members of the Board, one of whom at least to be engineering officer of the department.

As respects minutes upon railway schemes, to be made before the
ls for giving effect to them are framed, my Lords direct that when-
er the department has formed an intention to prepare such a minute,
hether upon the application of parties or otherwise, notice shall be
ven of that intention in the Gazette, for the information of those
hom it may concern.

My Lords direct that in such notice shall be stated, as nearly as may be, the points into which inquiry is to be made, in connexion with the proposed line of railway. No such minute, unless of a preliminary or provisional nature, shall be signed until six weeks after such notice. Every such minute shall be published forthwith in the Gazette; and every such minute shall be laid on the table of both Houses of Parliament, fourteen days after the opening of the Session.

Reports to Parliament on railway bills, shall be made within fourteen days, if there shall have been previous report on the schemes embodied in them respectively; and at all events within six weeks at the furthest from the receipt of any such bill.

3. As regards the measures to be taken for obtaining early and regular information respecting railway bills, and railway projects, before they have assumed the form of bills.

Adverting to the resolutions already adopted by the House of Commons on the 19th July, and to those which it is the intention of the Vice-President to propose for adoption in the House of Lords, and also to the provisions contained in the Joint-stock Companies Registration and Regulation Bill (*m*), which, if that bill shall become law, will ensure the deposit in a public office, under the superintendence of this department, of all documents made public by the promoters of any such joint-stock undertaking, as may be formed subsequently to the passing of the act,—my Lords are of opinion that there will be adequate security for their being duly apprised, from time to time, of the origin and progress of future railway projects, up to the periods of the presentation of the bills.

To make similar provision for their subsequent stages, before the passing of the acts of incorporation, my Lords will cause to be addressed to all the Parliamentary Agents, the circular hereto annexed (*n*).

(*m*) Now 7 & 8 Vict. c. 110, post, Appendix, 37.

(*n*) CIRCULAR LETTER TO PARLIAMENTARY AGENTS.

Railway Department, Board of Trade, Whitehall, August, 1844.

SIR,

Referring to the recommendation of the Select Committee on Railways, that "railway bills be submitted to the Board of Trade previously to their coming under the notice of Parliament," with a view to the examination of these bills by the Board, and to the resolution adopted by the House, "That, in the case of railway bills, a copy of every bill annexed to a petition be deposited in the office of the Board of Trade, on or before the day of presentation of the petition to the House," I am directed by the Lords of the Committee of Privy Council for Trade, to call your attention to the course of proceedings with regard to railway bills entrusted

railway projects already announced to the public, during
ar, and now in existence, but not having assumed the
ay Lords direct a list to be prepared of these, and the
: hereto annexed, to be addressed to the solicitors or
promoters of them.

hus shewn the constitution of the Railway De-
the Board of Trade during the Session of 1845,

e, which will become
rder to give effect to
ıpervision of the Board
such bills during their
gh Parliament.
ill be desirous of exer-
ervision with the least
erence with the ordi-
of Parliamentary busi-
ı this view, they con-
most convenient course
ire that the information
nable them to form a
he bill, at its different
be furnished to them by
the same times as such
: required to be lodged
Bill Office, by the Stand-
:he House.
', my Lords think fit to
gard to railway bills—
copy of such filled-up
sed to be submitted to
e, as is deposited, in
th the 136th Standing
Private Bill Office, at or
e of giving notice to the
at the same time de-
office of the Railway
f the Board of Trade.
printed copy of every
led in committee, ex-
wherein the committee
he amendments to be
or literal, be deposited
the bill, at the office of
partment of the Board
clear days at least be-
fore the consideration of the Report.

3. That in the case of railway bills, where it is intended to bring up any clause, or to propose any amendment in the Report, or the consideration of the Report, or on the third reading of any bill, notice shall be given thereof, and a copy of such clause or amendment deposited in the office of the Railway Department of the Board of Trade, on the day previous to such Report, or consideration of the Report, or third reading.

4. That in the case of railway bills, where amendments made by the House of Lords to any bill sent up to them are to be taken into consideration, a copy of the same be deposited by the agent for the bill, in the office of the Railway Department of the Board of Trade, on the day previous to the same being proposed to be taken into consideration.

In fixing the same periods for the deposit of information regarding railway bills in the Railway Department of the Board of Trade, as is required by the Standing Orders of the House, in regard to the deposit of similar information in the Private Bill Office, my Lords wish, however, to call your attention to the desirableness of furnishing, in all cases, copies of railway bills, and information respecting them, at the earliest periods when it may be found practicable.

I am, &c.

(Signed) S. Laing.

it now remains to be stated, that, after the Board had reported to Parliament upon all the schemes brought before them during that Session (*o*), it was deemed desirable to make some alterations in the mode of conducting the business of the railway department; and, on the 10th July, 1845, the following minutes were agreed to:—

At the Council Chamber, Whitehall.

By the Right Honourable the Lords of the Committee of Privy Council, appointed for the consideration of all matters relating to Trade and Foreign Plantations.

My Lords read and considered the minute of the Lords of the Committee of Privy Council for Trade, dated the 6th August, 1844, relative to the constitution and mode of proceedings of the railway department.

Having adverted to the various important changes which have been effected by the House of Commons, during the present session, in the constitution and proceedings of the select committees appointed to consider the provisions of railway bills; and considering that this altered state of circumstances appears to render it unnecessary that the railway department should continue, in pursuance of the recommendation of the select committee on railways of 1844, to submit to Parliament reports on the comparative merits of railway schemes, my Lords are of opinion, that it is desirable to make certain alterations, in the form of the railway department, and in the rules for conducting railway business.

1. My Lords are of opinion that the distinct board constituted by the minute of 6th August, 1844, should be discontinued, and that all railway business should thereafter be transacted by the Lords of the Committee of Privy Council for Trade, in the same manner as the ordinary business of this committee.

2. All such railway business, however, shall be transacted by proceedings distinct from the ordinary business of the committee. The despatch of railway business shall be conducted by separate written minutes, and the directions and decisions of the Lords of the com-

(*o*) Mr. Laing states, in his evidence given before the Select Committee on Railway Bills, (2nd Report), that, for the Session 1845, plans and projects were deposited at the Board of Trade, by the promoters of 248 distinct projects. Upwards of 700 plans were deposited previously to the Session 1846.

all be carried into effect by the several officers of the railway
it.

orts will not hereafter be prepared for Parliament, convey-
inion of the Lords of this committee, on the merits of any
roject, or on the comparative merits of competing schemes.

in order that my Lords, with a view to guarding the public
nay have at all times an accurate knowledge of the objects
rious railway schemes, and of the extent of the powers which
oters desire to obtain, my Lords direct that the proper steps
: taken for submitting to the two Houses of Parliament (*p*),
sity of adopting resolutions requiring the promoters of the
chemes, to deposit, as heretofore, at the Board of Trade, a
he plans, sections, &c. (*q*) It would also be expedient that
ald be required to deposit, concurrently with their plans and
a sketch of the proposed lines, on an ordnance map of Eng-
n a scale equal to such ordnance map (*r*), and also a written
t, containing a description of the railway, its course, its advan-
proposed fares and charges, and the principal provisions of
which they intend to introduce (*s*). It would further be de-
hat the promoters should deposit, as heretofore, with the
Trade, a copy of the bill, as well as of such amendments as
nade during its progress (*t*).

upon examination of any railway bill, it should seem expe-
the Lords of this committee, to draw the attention of Parlia-
its provisions, or to circumstances connected with it, my
fter the commencement of the session, and from time to
they may see fit, will direct a report to be prepared accord-
Such report shall have reference to the following subjects:—
Il questions of public safety.

All departures from the ordinary usage of railway legisla-
ere such usage has been sufficiently established.

r referring to the Standing
t will be seen that these re-
ations have been attended to
gislature.

: Lords' Standing Ord.,
, sect. 1, ante, 42; and
' Standing Ord., No. 23 *a*,

: Lords' Standing Ord.,
No. 227, sect. 1, ante, 42; and Commons' Standing Ord., No. 23 *a*, ante, 54.

(*s*) See Commons' Standing Ord., No. 102 *a*, ante, 68.

(*t*) See Lords' Standing Ord., No. 227, sect. 2, ante, 42; Id. 234, sect. 4, ante, 49; and Commons' Standing Ord., No. 39, ante, 57.

3rd. All provisions of magnitude which may be novel in their principle, or may involve extended consideration of public policy; for example, amalgamation and agreements between separate companies; extension of capital; powers enabling railway companies to pursue purposes different in kind from those for which they were incorporated; modifications of the general law; also, fares and charges; and generally, all points connected with the bills to which my Lords may think it right, on public grounds, to draw the attention of Parliament. Such report to be signed by the President or Vice-President of this committee; but it shall in no case pronounce an opinion on the actual or comparative merits of any railway scheme.

6. My lords direct that the annual report of the officers of the railway department, to the Lords of the Committee of Privy Council for Trade, shall be laid, as heretofore, on the table of both Houses of Parliament.

The rules which my Lords have now laid down for the transaction of railway business, will be subject to reconsideration hereafter, if, from further change of circumstances, or otherwise, they should be found inapplicable or inconvenient.

II. *Jurisdiction of the Board of Trade, by the Statute Law.*

The existing regulations for the management of railway business in the Board of Trade having been pointed out in the foregoing section, it is now proposed to consider the extent of the powers, which have been entrusted to that body, by the statute law.

It must be observed,—1st, that this subject is discussed, without reference to any powers which may be conferred on the Board of Trade, by any special railway act, and which have, therefore, reference only to the particular railway; 2ndly, that, as a clause is now usually inserted in the special acts, by which new companies are made subject to the provisions, of all general acts relating to railways, the following provisions are applicable to all such new companies:—

to the public,—enacts, that, if any difference in regard to the construction, alteration, or restoration of any road, or bridge, or other public work of an engineering nature, should arise between the company and any trustees, &c., or other persons, either party, after giving notice to the other, may apply to the Board of Trade, to decide on the proper manner of constructing, &c., such work, and the Board may then, if they think fit, decide the same accordingly, and authorise, by certificate, any arrangement or mode of construction, in regard to such work, which shall appear to them, either to be in substantial compliance with the provisions of that and the special act, or to be calculated to afford equal or greater accommodation to the public; but no such certificate can be granted, unless the Board are satisfied that existing private rights or interests, will not be injuriously affected thereby (*a*).

Authority of the Board of Trade, to inspect a railway, before it is opened for public use.

2. No railway, or any portion of a railway, can be opened for the public conveyance of passengers, until one calendar month after notice of the intention of opening it, has been given to the Board of Trade, by the company, and until ten days after notice has also been given, of the time when the railway will be, in the opinion of the company, sufficiently completed for the safe conveyance of passengers, and ready for inspection (*b*). If the officer appointed to inspect any new railway, shall report that the opening would be attended with danger to the public, by reason of the incompleteness of the works or permanent way, or the insufficiency of the establishment, together with the grounds of his opinion, the Board of Trade may, from time to time, order and direct the company to postpone the opening, for any period not exceeding one month at any one time, until it shall at last appear that such opening may take place

(*a*) 8 Vict. c. 20, s. 66, post, Appendix, 176.

(*b*) 5 & 6 Vict. c. 55, s. 4, post, Appendix, 21; repealing 3 & 4 Vict. c. 97, ss. 1, 2, post, Appendix, 15.

ings in the ledges or flanches thereof, for effecting communications with any collateral or branch railway, and any disagreement or difference arises between the company and such owner or occupier or other persons, as to the proper places for making such communication, then the Board of Trade are empowered to hear and determine the same, in such way as they shall think fit, and their determination is binding on all parties (*h*). And, although by the act of incorporation of any company, such disagreements as those above mentioned, are therein directed to be heard by justices of the peace, their jurisdiction is taken away (*i*). A clause in a subsequent statute, (which is not, as will be seen, applicable to all railways),—after reciting that powers of laying down branch lines opening into the ledges or flanches of main lines of railway, and of passing along such main lines, with carriages and waggons drawn by locomotive engines, or by other mechanical or animal power, and also powers to form roads or railways across existing railways on a level, had been given by various acts relative to railways, to the owners or occupiers of lands adjoining the railway, and to other persons with their consent,—enacts, that if, in the case of any railway on which passengers (*k*) are conveyed by steam or other mechanical power, it shall appear to the Board of Trade, that such power cannot be so exercised, without seriously endangering the public safety, and that an arrangement may be made, with a due regard to existing rights of property, the Board are authorised to order and direct that such powers shall only be exercised, subject to such conditions as they shall direct (*l*).

(*h*) 3 & 4 Vict. c. 97, ss. 18, 19, post, Appendix, 19.

(*i*) 3 & 4 Vict. c. 97, s. 18, post, Appendix, 19.

(*k*) No railway is to be considered a passenger railway within this clause, if two-thirds of its gross annual revenue is derived from the carriage of coals, iron, stone, or other metals or minerals. See 5 & 6 Vict. c. 55, s. 12, post, Appendix, 23.

(*l*) 5 & 6 Vict. c. 55, s. 12, post, Appendix, 23.

any station, at a greater speed than four miles an hour; and the company are made subject to all such rules and regulations, with regard to such crossings, as may from time to time, be made by the Board of Trade (*p*). So, the Board may require the company to make a screen, or other works, on the side of roads adjoining a railway, to prevent horses from being frightened (*q*).

The Board of Trade are also armed with very extensive powers, which enable them, in certain specified cases, to authorise companies to take possession of lands adjoining to railways, which the special railway acts would not justify a trespass upon. These powers, extensive in their nature, are granted for purposes connected with the public safety; and it is provided, that the works shall be as little injurious to the lands, as the nature of the case will admit of, and shall be executed with all possible despatch, and full compensation made to the owners and occupiers of such lands, for the loss or injury or inconvenience sustained by them (*r*).

Thus, the Board of Trade may empower any railway company, in case of an accident or slip happening, or being apprehended, to any cutting, embankment, or other work, to enter upon any lands adjoining the railway, for the purpose of repairing or preventing the accident, and to do such works as may be necessary for the purpose; and, in cases of necessity, the company may enter and execute such works, without the previous sanction of the Board, the company taking care, within forty-eight hours after such an entry, to report the nature of the accident or apprehended accident, and the works necessary to be done, to the Board of Trade. But these powers cease, if the Board, after considering the report,

(*p*) 8 Vict. c. 20, s. 48, post, Appendix, 172.

(*q*) 8 Vict. c. 20, ss. 63, 64, post, Appendix, 176.

(*r*) 5 & 6 Vict. c. 55, s. 14, post, Appendix, 24.

them; and that every such bye-law, &c., not so laid before them, shall cease to have any force or effect (*x*).

And, as to future bye-laws, it is further enacted, that no bye-law, &c., which should not be in force at the time of the passing of the act, and no order, rule, or regulation annulling any existing bye-law, &c., which should be made after the passing thereof, shall have any force, until two months after a copy of such bye-law, &c., certified in like manner, shall have been laid before the Board, unless the Board shall before such period signify their approbation thereof (*y*).

The Board are also authorised, at any time either before or after any bye-law, &c., laid before them, shall have come into operation, to notify to the company their disallowance thereof, and, in certain cases, the time at which it shall cease to be in force; and no bye-law, &c. so disallowed has any force (*z*). The statute also repeals every enactment contained in any act of Parliament theretofore passed, which required the approval or concurrence of any justice of the peace, court of quarter sessions, or other persons other than members of the said companies, to give validity to their bye-laws (*a*).

It may be collected from the foregoing enactments, (although they are not very clearly expressed), that the power to make bye-laws, upon persons other than officers and servants, is still preserved to railway companies, as it existed before the statute, subject, nevertheless, to the control of the Board of Trade; but with respect to bye-laws made for regulating the conduct of the servants of the company, it seems, that the Board of Trade have no jurisdiction

(*x*) 3 & 4 Vict. c. 97, s. 7, post, Appendix, 16.

(*y*) 3 & 4 Vict. c. 97, s. 8, post, Appendix, 16.

(*z*) Id., s. 9, post, Appendix, 16.

(*a*) 3 & 4 Vict. c. 97, s. 10, post, Appendix, 17.

Authority of the Board of Trade, to originate prosecutions, and oth r legal proceedings.

5. The Board of Trade were originally authorised (*c*) to take certain steps to compel railway companies to comply with the provisions contained in their respective acts of Parliament; but a more extensive measure being declared to be expedient, that enactment was repealed, and the following authorities substituted, by stat. 7 & 8 Vict. c. 85.

Whenever it appears to the Board of Trade that any of the provisions of the acts of Parliament for regulating any railway, or the provisions of that act, or of any general act relating to railways, have not been complied with by any railway company, or any of its officers, or that any railway company has acted or is acting in a manner unauthorised by the provisions of the acts of Parliament relating to such railways, or in excess of the powers given, and objects defined in such acts, and it also appears to the Board that it would be for the public advantage, that the company shall be restrained from so acting, the Board shall certify the same to the Attorney-General for England or Ireland, or to the Lord Advocate for Scotland; and thereupon the Attorney-General or Lord Advocate shall, in case such default shall consist of non-compliance with the pro-

be immediately, or, if travelling, at the first opportunity, removed from the company's premises, and forfeit his fare.

5. Any person found in the company's carriages or stations, in a state of intoxication, or committing any nuisance, or otherwise wilfully interfering with the comfort of other passengers; and every person obstructing any of the company's officers in the discharge of their duty, is hereby subjected to a penalty not exceeding 40*s*., and shall immediately, or, if travelling, at the first opportunity, be removed from the company's premises, and forfeit his fare.

Note.—Persons wilfully obstructing the company's officers, in cases where personal safety is concerned, are liable, under the 3 & 4 Vict. c. 97, s. 16, to be apprehended and fined 5*l*., with two months' imprisonment in default of payment.

6. Any passenger cutting the linings, removing or defacing the number-plates, breaking the windows, or otherwise wilfully damaging or injuring any of the company's carriages, shall forfeit and pay a sum not exceeding 5*l*., in addition to the amount of damage done.

(*c*) By 3 & 4 Vict. c. 97, s. 11, post, Appendix, 17.

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with any of the required conditions, (except as to the an of fare), upon such terms as shall appear more beneficia convenient for the passengers (*r*).

Authority of the Board of Trade to regulate the speed of mail trains.

8. The obligations imposed on railway companies, to t mit her Majesty's mails, are considered elsewhere (*s*). early statute required them to convey the mails by t propelled at the maximum speed of their first-class trai but, by a subsequent statute, the Postmaster-Gene authorised to require that the mails shall be forwarde certain railways, at any rate of speed which the Insp General of Railways shall certify to be safe, not exce twenty-seven miles in the hour, including stoppages (

Authority of the Board of Trade to appoint auditors and umpires.

9. The Board of Trade are authorised, if they thin to appoint an umpire, to determine certain matters re to arbitration, under the provisions of the Consolidation This power applies to all cases where a railway comp one of the parties interested in the application; and the] may be called upon to exercise their powers, if the ar tors neglect or refuse to appoint an umpire. See the panies' Clauses Consolidation Act, 8 Vict. c. 16, s. Appendix, post, 109; the Lands Clauses Consolic Act, 8 Vict. c. 18, s. 28, Appendix, post, 124; the way Clauses Consolidation Act, 8 Vict. c. 20, s. 129, pendix, post, 191.

And by the Joint-stock Companies Registration 7 & 8 Vict. c. 110, s. 38, (Appendix, post, 55), the I of Trade are required in certain cases, on the applicati a shareholder, to appoint an auditor to examine the acc

(*r*) 7 & 8 Vict. c. 85, s. 8, post, Appendix, 31.

(*s*) See, on this subject, post.

(*t*) 1 & 2 Vict. c. 98, s. 1, post, Appendix, 5.

(*u*) 7 & 8 Vict. c. 85, s. 11 Appendix, 31.

It will be seen from the foregoing summary, that, n
standing the resolution of the Board of Trade wh
promulgated during the session of Parliament 1845
jurisdiction of the Board over railway companies
very extensive in its application; and experience s
shew, that the labours of this department will gre
crease, as railway communication is more and m
tended.

The necessity of a powerful and vigilant control o
way transactions in general is nevertheless becomin
day more apparent; and it is probable that in an early
of Parliament the whole subject will be reconsidered
view to remodel the constitution of the railway dep
of the Board of Trade. It will probably be deeme
able to enlarge the powers of that Board, or to est
separate department to fulfil its duties (*b*).

(*a*) See ante, 84.

(*b*) It may be worthy of consideration, whether a separate and distinct department of the government might not exercise a salutary control over all bodies entrusted with the execution of public works, as railways, turnpikes, water-works, bridges, canals, docks, &c.; and any contemplated measures for improving the drainage, and supply of water to large towns, might also be brought into gradual operation, under the superintendance of such a board. It is, however, submitted, that the courts of law and equity should continue tc their powers as they do a and thus the decisions or r dations of the Board for Pub on engineering and othe entrusted to them, might b by mandamus, or other sir ceeding. Any system, w transfer the *administrati* law from the ordinary tri a public board, will be loo with suspicion, however abl rightly the powers of such may be exercised.

scribed quorum be not present, the existing directors
tinue in office till the first ordinary meeting of the foll
ing year. (*Id.*, s. 84, post, App., 100). A director mu
a shareholder, and he may not hold or accept any offic
place of trust or profit under the company, or be i
ested in any contract (*e*). (*Id.*, s. 85, post, App., 100).
he does, or if, in any manner, he participates in the pr
of any work to be done for the company, or ceases to
shares in the company (*f*), he ceases to be a director,
his place is declared vacant. (*Id.*, s. 86, post, App., 1
But the disqualification as to contracts does not exte
contracts made with an incorporated joint-stock comp
of which the director is a member; nevertheless such
rector cannot vote on any question of contract with
joint-stock company. (*Id.*, s. 87, post, App., 101).
directors retire from office at the times and in the pro
tions prescribed in the special act: and if no number
prescribed, one-third at the end of the first year,
other third the second year, and the remaining third
third year; the rotation being determined by ballot:
retiring directors are eligible to be re-elected. (*Id.*, s.
post, App., 101). If a director dies, resigns, becomes
qualified or incompetent, or ceases to be a director by
other cause than by going out by rotation, the rem
ing directors may elect a shareholder to supply his pl
(*Id.*, s. 89, post, App., 101).

If the shareholders neglect to elect the full numbe
directors, which the special act requires to manage the aff

(*e*) This applies only to contracts made with the company in the execution of its enterprise. In *The Sheffield and Manchester Railway Co.* v. *Woodcock*, (7 Mee. & W. 582), it was held, that a similar clause did not disqualify directors, who were members of a banking company, from acting as bankers to the railway company.

(*f*) Bankrupts and insolvents therefore, disqualified. (See *Phel Lyle*, 10 A. & E. 113). But, it s if a shareholder makes an equi mortgage of his shares, that doe disqualify him. (Per Lord Abi C. B., in *Cumming* v. *Prescott*, & Col. 488).

acting de facto, their acts may be valid, althou acting may not have been duly qualified (*k*).

2. The powers of the directors to manage the affairs of the company, subject to the control of the shareholders.

2. The directors have the management and ance of the affairs of the company, except directed to be transacted by a general meetin also to the control and regulation of any ge specially convened for the purpose, but not s invalid any act done by the directors prior t meeting. (*Id.*, s. 90, post, App., 101). And the company, which can be exercised only at a ing, are as follows:—The choice and remova and increasing or diminishing their number; auditors; the determination as to the remunera ors, auditors, treasurer, and secretary (*l*); the as to the amount of money to be borrowed the determination as to the augmentation of the declaration of dividends. (*Id.*, s. 91, post The directors hold meetings as they shall ap two directors may call a meeting. To const ing, a quorum must be present, consisting, if prescribed in the special act, of one-third of Questions are decided by a majority of v chairman is entitled to a casting vote. (*I* App., 102). A chairman and deputy chairma may be elected annually; and any vacancy h ing the year must be filled up. (*Id.*, s. 93, pos In the absence of both, at a meeting of director chairman is to be chosen. (*Id.*, s. 94, post, Ap

(*k*) *Foss* v. *Harbottle*, 2 Hare, 461. See 8 Vict. c. 16, s. 99, post, Appendix, 104.

(*l*) As to the right of directors to sue the company for remuneration, see *Dunston* v. *The Imperial Gas Light Company*, 3 B. & Ad. 125. It seems, that, und thorities contained i company are auth pension to an office sequence of ill-healt *Imperial Gas Com* 325).

against the company, as might be brought, had the same contracts been made between private persons only. (*Id.*, s. 97, post, App., 103) (*m*).

Minutes of all appointments, contracts, orders, and proceedings of the directors and committees, must be entered in books, and every such entry signed by the chairman presiding at the meeting (*n*), and the minutes are then receivable in evidence, without further proof. (*Id.*, s. 98, post, App., 103). And all acts done by directors are valid, although a director may have been disqualified or defectively appointed. (*Id.*, s. 99, post, App., 104). No director, by executing a contract

(*m*) The rule of the common law is, that a corporation, being an invisible body, cannot manifest its intentions, by any personal act or oral discourse; and it therefore acts and speaks only by its common seal. For, though the particular members may express their private consents to any act, by words or signing their names, yet this does not bind the corporation: it is the fixing of the seal, and that only, which unites the several assents of the individuals who compose the community, and makes one joint assent of the whole. (See Dav. 44, 48). In pursuance of this doctrine, all contracts made by corporations are required to be under their common seal, subject to certain exceptions in favour of trading and other contracts. (See *Beverley* v. *The Lincoln Gas Light Company*, 6 Ad. & E. 829; *The Fishmongers' Company* v. *Robertson*, 5 Man. & G. 131). These excepted cases depend upon very subtle distinctions; and the above enactment will prevent many difficulties, which would otherwise have arisen, in enforcing contracts made by railway directors.

(*n*) Where a statute required that the directors should keep a minute and entry of the orders and proceedings of every meeting of the directors, "which shall be signed by the chairman at each respective meeting," the evidence shewed that the minutes had been signed by the chairman, not at the meeting when the proceedings took place, but at the next meeting, over which he also presided as chairman. The Court held, that the minutes were sufficiently signed; and said, that, if signature during the meeting had been considered necessary by the Legislature, it would have been very easy, by a slight transposition of words, to have carried out such an intention. (*Southampton Dock Company* v. *Richards*, 1 Man. & G. 448; S. C., 2 Railway Cases, 215; 1 Scott, N. R., 219. See also on the same point *London and Brighton Railway Company* v. *Fairclough*, 2 Man. & G. 674; 2 Railway Cases, 544; 3 Scott, N. R., 68: *West London Railway Company* v. *Bernard*, 3 Q. B. 873; *Miles* v. *Baugh*, 3 Q. B. 845; 3 Gale & D. 119: *Sheffield and Manchester Railway Company* v. *Woodcock*, 2 Railway Cases, 522; 7 Mee. & W. 574).

other power, can be sued individually (*o*); nor is he to an execution, or other process; and the directors itled to be indemnified out of the capital of the com- r all losses incurred by them as directors. (*Id.*, s. st, App., 104).

noney to be raised by subscriptions, loans, or other- ıust be applied, first, in paying the costs of the ıct; secondly, in carrying the purposes of the com- o execution. (*Id.*, s. 65, post, App., 97).

ously to every ordinary meeting at which a dividend led to be declared, a scheme must be prepared by the s, shewing the profits of the company, and apportion- same among the shareholders; and such scheme be- ibited at the meeting, a dividend may be declared ıgly. (*Id.*, s. 120, post, App., 107). No dividend may e, whereby the capital stock will be, in any degree, . Provided that the word "dividend" shall not be ed to apply to a return of any portion of the capital ith the consent of all the mortgagees and bond cre- f the company, due notice being given for that pur- an extraordinary meeting to be convened for that (*Id.*, s. 121, post, App., 107). Before the profits

Dividends.

will be prudent for directors ll contracts "as directors." *s* v. *Pike*, (Mur. & Hurl. defendant, a director of the ı Mining Company, ordered he plaintiffs, and signed his , director of W. C. M. Com- ıtimating at the time that were for the company. The were incorporated by act of ıt, and in the act was a abling the company to sue ued in respect of contracts any individual director, on the company. It was de- cided, that the defendant was liable in his private capacity; and per Parke, B.—"I dare say the defendant intended to act on behalf of the com- pany. He ought, however, to have used clear words; no doubt the plain- tiffs had an option to sue him." See also *Burrell* v. *Jones*, 3 B. & Ald. 47. When a party is not liable in his indi- vidual capacity, see *Tyrrell* v. *Wool- ley*, 1 Man. & G. 809; and the rule laid down by Vice-Chancellor Wig- ram in *Wilson* v. *Goodman*, 4 Hare, 62.

are apportioned, the directors may set aside a sum to contingencies, or for enlarging, repairing, or improving works. (*Id.*, s. 122, post, App., 107). No dividend is able in respect of any share until the calls payable o shares held by the owner thereof are paid. (*Id.*, s. 123, App., 108).

From the foregoing statement of the powers whicl entrusted to the directors of a railway company, it wi seen that the general superintendance and manageme the affairs of the company, belong to them; but it mus be forgotten, that it is always competent to the shareho to call a general meeting of the company (*p*), and the jority of the shareholders may, at such meeting, control regulate the future proceedings of the directors (*q*).

Meetings of shareholders.

It will be proper, at this place, to state the mode in w such meetings are held. The stat. 8 Vict. c. 16, prov that two meetings of shareholders, called "ordinary n ings," shall be held every year. (Sect. 66, post, App., And no matters, except such as are appointed by that o special act to be done at an ordinary meeting, can be t acted without notice. (*Id.*, s. 67, post, App., 98). E general meeting of shareholders, other than an ordi meeting, is called "an extraordinary meeting," and ma convened by the directors as they think fit. (*Id.*, s. 68, App., 98). But only such business as was mentioned i notice which convened the meeting can be entered u (*Id.*, s. 69, post, App., 98). A certain number of sl holders (*r*) may also require an extraordinary meeting t held, by sending a requisition to the directors, whc thereupon required to convene the meeting; or, on

(*p*) See 8 Vict. c. 16, s. 70, post, Appendix, 98.

(*q*) See 8 Vict. c. 16, s. 90, post, Appendix, 102.

(*r*) If, from any circumstances, an exact compliance with the ter the statute is impossible, it seem these and similar provisions w considered as directory only. *Foss* v. *Harbottle*, 2 Hare, 496

meeting has a casting vote, if there be an equality of votes. (*Id.*, s. 76, post, App. 99). Instruments (*t*) appointing a proxy must be transmitted to the secretary before the prescribed period, and, if no period be prescribed, forty-

by appoint C. D., of ——, to be the proxy of the said A. B. in his absence, to vote in his name upon any matter relating to the undertaking proposed at the meeting of the proprietors of the said company, to be held on the —— day of —— next, in such manner as he the said C. D. doth think proper. In witness whereof, the said A. B. hath hereunto set his hand [*or, if a corporation, say,* "the common seal of the corporation"] the —— day of ——, one thousand eight hundred and ——.

A. B.

(*t*) These instruments are liable to a stamp duty. By stat. 7 Vict. c. 21, s. 1, the former duties are repealed; and new duties granted. By sect. 2, "for or in respect of every letter or power of attorney, or other instrument, made for the sole purpose of appointing or nominating a proxy, to vote at any meeting of the proprietors or shareholders of or in any joint-stock company, or other company or society whose stock or funds are divided into shares, and transferable, 2*s.* 6*d.*"

By sect. 6, "any letter or power of attorney, or other instrument made for the purpose of appointing or nominating a proxy, and chargeable with duty under this act, shall authorise such proxy to vote upon any matter, at one meeting of the proprietors or shareholders of or in any company or society, the time of holding whereof shall be specified in such instrument, or at any adjournment of such meeting; and no such letter or power of attorney, or other instrument, shall be further or otherwise available; anything in such instrument or in any act of Parliament to the contrary notwithstanding."

By sect. 7, "it shall not be lawful for the commissioners of stamps and taxes, or any of their officers, under any pretence whatever, to stamp or mark, after the signing thereof by any person, any vellum, parchment, or paper upon which any letter or power of attorney, or other instrument appointing or nominating a proxy, chargeable with duty under this act, shall be ingrossed, written, or printed; and if any person shall make or sign any such letter or power of attorney, or other instrument as aforesaid, which shall be ingrossed, written, or printed, or partly ingrossed or written and partly printed, upon vellum, parchment, or paper not duly stamped according to law, or if any person shall vote, or attempt to vote, or act as a proxy in pursuance or under the authority or pretended authority of any such letter or power of attorney, or other instrument not duly stamped as aforesaid, every person so offending in any or either of the cases aforesaid shall forfeit and pay the sum of 50*l.*; and every vote made or given, or other act done in pursuance, or under the authority or pretended authority, of any such letter or power of attorney, or other instrument not duly stamped as aforesaid, shall be absolutely null and void to all intents and purposes."

but chose to file a bill in equity against the directors; and upon that occasion Vice-Chancellor Wigram observed: "It is only necessary to refer to the clauses of the act, to shew, that, whilst the supreme governing body, the proprietors at a special general meeting assembled retain the power of exercising the functions conferred upon them by the act of incorporation, it cannot be competent to individual corporators to sue in the manner proposed by the plaintiffs on the present record. This, in effect, purports to be a suit by cestui que trusts, complaining of a fraud committed, or alleged to have been committed, by persons in a fiduciary character. The complaint is, that those trustees have sold lands to themselves, ostensibly for the benefit of the cestui que trusts. The proposition I have advanced is, that, although the act should prove to be voidable, the cestui que trusts may elect to confirm it. Now, who are the cestui que trusts in this case? The corporation, in a sense, is undoubtedly the cestui que trust; but the majority of the proprietors at a special general meeting assembled, independently of any general rules of law upon the subject, by the very terms of the incorporation in the present case, has power to bind the whole body, and every individual corporator must be taken to have come into the corporation upon the terms of being liable to be so bound. How, then, can this Court act in a suit constituted as this is, if it is to be assumed, for the purposes of the argument, that the powers of the body of the proprietors are still in existence, and may lawfully be exercised for a purpose like that I have suggested? Whilst the Court may be declaring the acts complained of to be void at the suit of the present plaintiffs, who, in fact, may be the only proprietors who disapprove of them, the governing body of proprietors may defeat the decree by lawfully resolving upon the confirmation of the very acts which are the subjects of the suit. The very fact, that the governing body of the proprietors assembled at the

remained, except that of a suit by individual corporators, in their private character, and asking in such character the protection of those rights to which, in their corporate character, they were entitled, the court of equity will dispense with the presence of parties, who would, according to the general practice, have been necessary parties to the suit (*a*).

3. The accounts of the company, and their audit.

3. With respect to the keeping the accounts of the company, the stat. 8 Vict. c. 16, requires the directors to cause full and true accounts to be kept of all matters and things for which monies have been received or paid. (*Id.*, s. 115, post, App. 106). The books must be balanced at the times prescribed by the special act, or, if no time be there prescribed, fourteen days at least before each ordinary meeting; and an exact balance-sheet must be made up, exhibiting a statement of the capital stock, credits, and property of the company, and the debts due by them, with a distinct view of profit and loss on the preceding half-year. (*Id.*, s. 116, post, App. 106). The books and the balance-sheet are to remain open for the inspection of shareholders, at the office, for a time prescribed, before and after each ordinary meeting, and extracts may be taken (*b*); but, at any other time, the books cannot be inspected, unless by a written order signed by the directors. (*Id.*, ss. 117, 119, post, App. 107). And, at the ordinary meeting, the balance-sheet and report of the auditors must be produced to the shareholders. (*Id.*, s. 118, post, App. 107). A book-keeper must be appointed to enter the accounts and keep the books, and

(*a*) *Preston* v. *The Grand Collier Dock Company*, 2 Railway Cases, 335; S. C., 11 Sim. 327; *Wallworth* v. *Holt*, 4 My. & Cr. 619; *Lund* v. *Blanshard*, 4 Hare, 9; Ibid. 290.

(*b*) Where a shareholder was sued for calls, due on his shares, an application made by him to the Court, for an order to inspect the minute-books of the company, was refused. *Birmingham and Thames Junction Railway Company* v. *White*, 1 Q. B. 282; S. C., 2 Railway Cases, 863. As to when a bond creditor may examine the books of a company, see *Pontet* v. *The Basingstoke Canal Company*, 2 Bing. N. C. 270; S. C., 2 Scott, 543.

must be a shareholder, but he cannot hold another office in the company. (*Id.*, s. 102, post, App. 104). One auditor goes out of office every year by seniority; but he is eligible to be re-elected. (*Id.*, s. 103, post, App. 104). If a vacancy among the auditors occurs during the current year, the shareholders may supply it. (*Id.*, s. 104, post, App. 105). Ordinary meetings for the election of auditors are subject to the same provisions as ordinary meetings for the election of directors. (*Id.*, s. 105, post, App. 105). The directors must deliver to the auditors the half-yearly or other periodical accounts and balance-sheet, fourteen days before the ensuing ordinary meeting at which they are to be produced; (*Id.*, s. 106, post, App. 105); and it is the duty of the auditors to examine them. (*Id.*, s. 107, post, App. 105). Accountants and other persons may be employed by the auditors, and the auditors may make a special report on the accounts, or simply confirm the same. (*Id.*, s. 108, post, App. 105).

4. The registry of shareholders, and transfer of shares.

4. By the 8 Vict. c. 16, the capital of the company is directed to be divided into shares, of the prescribed number and amount, and numbered in arithmetical progression, beginning with number 1. (*Id.*, s. 6, post, App. 87). Such shares are declared to be personal estate, and transmissible as such (*c*). (*Id.*, s. 7, post, App. 87). Every person who shall have subscribed the prescribed sum or upwards, to the capital of the company, or who shall have otherwise become entitled to a share in the company, and whose name is on the register of shareholders, is to be deemed a shareholder. (*Id.*, s. 8, post, App. 87).

(*c*) This provision disposes of objections which would otherwise arise on the construction of the Statute of Frauds. *Humble* v. *Mitchell*, 11 A. & E. 207. It also prevents a right of dower from attaching to shares. *Buckeridge* v. *Ingram*, 2 Ves. jun. 652. It seems that railway shares are not within the Statute of Mortmain. *Thompson* v. *Thompson*, 1 Collier's Rep. 381.

tered, it was the practice of companies to issue a pleasure scrip certificates payable to bearer; but i we have seen (*d*), a penalty is imposed upon any who shall issue scrip or letters of allotment, before tificate of provisional registration is obtained; an provisional registration, the promoters of a compa only open subscription lists, and allot shares, and deposits by way of earnest thereon, of a certain sp amount (*e*).

Since this act has come into operation, railway con have invariably been provisionally registered, and scr tificates have been issued to those persons who hav cuted the preliminary contracts.

It is a matter of notoriety, that the scrip thus is publicly sold in the Stock Exchange, to the amount o thousands (*g*); that the purchasers, for the most par no legal transfer made to them by the vendor, or th pany who issued the scrip, but the transaction is com by the payment of the purchase-money, and receivi scrip; and it is equally notorious, that these purcha very frequently made for the mere chance of selli scrip at an advanced price, and that such speculations not be engaged in if the purchasers were obliged t the expense of stamps, and a proper legal assignment

(*d*) See ante, 3.

(*e*) See ante, 7.

(*g*) See *London Grand Junction Railway Company* v. *Freeman*, 2 Man. & G. 639; *Jackson* v. *Cocker*, 2 Railway Cases, 372; S. C., 4 Beavan, 59.

(*h*) It is now well known that a grave doubt exists whether all this traffic is not altogether illegal, by force of the 26th sect. 8 Vict. c. 110. Since the author wrote the note (*b*) annexed to that section, (post. App. 52), in which he expressed an opinion that the section does not railway companies, he has formed that several very emi yers have expressed a diffe nion; but, upon a careful deration of the question, th with great deference, still re original opinion,—that the l of the section does not appl way companies, under any stances. The shares of railw panies come into being, as by force of their special act appears by the following l

ppears, also, that railway companies have been ac-
ed, in times past, as soon as the special act has been
ed, to register the holders of these scrip certificates
reholders, without inquiring whether they were the
l subscribers, who had obtained the scrip and signed
liminary contracts, or not; and thus the registry of the
olders has been made according to numerical order, as
rip is brought to the company's office, and not with
ce to the numbers of the shares allotted, as they ap-
l on the face of the scrip. The legality of this prac-
s been questioned, in several cases, but it was finally
ined, that parties who had been registered as share-
s, under circumstances similar to those above-men-
, are liable to pay up the calls on the shares, although
ad never signed the preliminary contracts, or obtained
gal transfer of the scrip, from the original allottees of
ares (*i*). These decisions appear to be applicable to
rovisions of the above-mentioned statute with respect

to be found in the acts passed the last session of parliament, the capital of the company £——, and the number of into which the capital shall ded shall be —— thousand, amount of each share shall be ." See also the correspond- ctment, 8 Vict. c. 16, s. 6, pp. 87. It seems, therefore, ly such certificates of shares issued, by companies acting eeds of settlement, are pointed e latter part of the 26th sec- nd it is submitted that this ppears, if the form of the cer- given in Schedule I (evidently rith a view to one of the re- nts of sect. 26) is referred to, pp. 73). By this form of te the share is mentioned by ber, and it is treated as an share; whereas, if the argu- ment above suggested has any force, the shares of railway companies are not brought into existence. See also the observations of Lord *Langdale*, M. R., in *Jackson* v. *Cocker*, 4 Beav. 63; S. C., 2 Railway Cases, 375. The mere circumstance that a right to possess shares *in futuro* is, by mistake and inadvertence, sometimes treated in the certificates which are issued, and in other documents, as if the shares were already created, seems undeserving of much weight in considering this important question.

(*i*) See *Birmingham, Bristol, and Thames Junction Railway Company* v. *Locke*, 1 Q. B. 256; *London Grand Junction Railway Company* v. *Graham*, 1 Q. B. 271; *London Grand Junction Railway Company* v. *Freeman*, 2 Man. & G. 606; 2 Railway Cases, 468.

to the registration of shares; and it may be assu
if the holders of scrip apply to the company, an
registered as shareholders, they become liable t
subsequent calls (*k*) so long as the shares remain
in their names.

In all the cases above referred to, the company
offering any objection, registered the scrip, and
names of the holders on the registry; and under
sions of the new statute, (sect. 8, ante, 120), suc
when taken, seems to constitute the party a sha
but a question of a different kind will be raised, if
company should hereafter *refuse* to register the
scrip certificates, he not being the original allott
shares. It is obvious, that, in some cases, it may
utmost importance to directors who have obtained
cial act, and are responsible to carry on the undert
to compel the parties who signed the provisional
to come in and register themselves as shareholde
are there wanting authorities to shew that such orig
scribers may be sued for calls, although they have
come registered (*m*). The point here suggested
been decided; and when it arises, much may dep
the form of the provisional contracts, and also of t
of allotment and scrip certificates which were issu
company.

(*k*) *The Cheltenham and Great Western Union Railway Company* v. *Daniel*, 2 Q. B. 292; S. C., 2 Railway Cases, 728: *Sheffield and Manchester Railway Company* v. *Woodcock*, 7 Mee. & W. 584; S. C. 2 Railway Cases, 522.

(*l*) *R.* v. *Eastern Counties Railway Company*, 10 A. & E. 531; *R.* v. *The Trustees of the Luton Roads*, 1 Q. B. 860.

(*m*) As to the mode of proceeding to recover calls, against subscriber, who has neve tered, see *Kidwelly Can* v. *Raby*, 2 Price, 93; *North of England Railw* v. *Biddulph*, 7 Mee & W. 2 Railway Cases, 401; *W Railway Company* v. *B* Law Journal, Q. B. 6 *Tunnel Company* v. *Sh* & C. 341; 9 D. & R. 27

all the persons through whom the plaintiff claims, it will be a question whether he will be entitled to recover. All the members of the Court are not quite agreed in their view of the law upon this part of the case, and therefore I pronounce no opinion upon it at present."

It seems, that if a company should unlawfully refuse to register a shareholder, who is entitled to be upon the register, a writ of mandamus does not lie, to compel registration. Thus, where an application was made to the Court of Queen's Bench, to compel a chartered company to make a transfer of stock in their books, the application was refused, and the Court said, that the writ of mandamus was a high prerogative writ, confined to cases of a public nature (*o*).

Transfer of shares.

With respect to the transfer of shares, the statute provides, that every shareholder may sell his shares, or his interest in the capital stock, by deed duly stamped, which may be according to the form annexed to the act (*p*). (8 Vict. c. 16, s. 14, post, App. 88). The deed of transfer must be delivered to the secretary of the company, who enters a memorial thereof in "The Register of Transfers," and delivers to the purchaser a new certificate, or indorses a memorandum of the transfer on the old one (*q*). Until a transfer has been thus delivered, the vendor continues liable for all calls, and the purchaser is not entitled to receive profits, or to vote (*r*). (*Id.*, s. 15, post, App. 88). No

(*o*) *R.* v. *The London Assurance Company*, 5 B. & A. 901; but see *R.* v. *The Worcester Canal Company*, 1 Man. & Ry. 529, contrà.

(*p*) See the form, post, App. 115. It seems that the company would be bound to transfer shares, even to insolvent persons. See *The Huddersfield Canal Company* v. *Buckley*, 7 T. R. 36.

(*q*) *Wilkinson* v. *Lloyd*, 9 Jur. 328, Q. B.

(*r*) Shareholders cannot get rid of their liability to pay calls, except in the mode pointed out in the statute, even in cases where they hold the shares under a trust for the company. *Preston* v. *The Grand Collier Dock Company*, 11 Sim. 327; S. C., 2 Railway Cases, 350. And if directors accept an informal surrender of shares, upon an agreement that the surrenderee shall not be required to pay any further calls, a court of equity

r may transfer any share, after any call shall have e in respect thereof, until he has paid such call (*s*). he has paid all calls, due on every share held by ., s. 16, post, App. 89). The Register of Transfers losed for a certain number of days before each meeting, and any transfer made whilst the register ed, as between the company and the transferee, is d as made, subsequently to the ordinary meeting. 7, post, App. 89).

hare becomes transmitted, by death, bankruptcy, cy, marriage, or by other similar means, the direct- require the transmission to be authenticated by a on in writing, which must be left with the secretary, reupon enters the names of the persons entitled in ter of shareholders (*t*). Until a transmission be so cated, no person entitled can share in the profits or *Id.*, s. 18, post, App. 89). A copy of the register of riage, and an extract of the probate or letters of ration, must be produced to the secretary, when

bably issue an injunction an action to recover calls gainst other shareholders. . *The Birmingham, Bris- Thames Junction Railway* 1 Railway Cases, 640.

special provision sets at tion which has been raised, ffect of a transfer of shares ll was made. *The Ayles- ay Company* v. *Thompson*, Cases, 668; *The Ayles- ay Company* v. *Mount*, 2 ases, 679; S. C., 4 Man.

when shares remain to the disposition of a bankrupt, ison v. *Speirs*, 14 Law J., *Ex parte Lancaster Canal* Deac. & Chit. 411: *Ex parte Watkins*, 2Mont. & A. 348; *Ex parte Harrison*, 3 Mont. & A. 356; *Ex parte Orde*, 1 Deac. 166; *Ex parte Vallance*, 3 Mont. & A. 225. Shares in public companies, belonging to a person against whom any judgment has been entered up, may be charged with the payment of the judgment debt, by the order of a judge; and the effect of such an order is to restrain the company from permitting a transfer of the shares to be made. See 1 & 2 Vict. c. 110, s. 14; 3 & 4 Vict. c. 82, s. 1. And shares in any public company, standing in the name of a petitioner for protection under the Insolvent Act, (7 & 8 Vict. c. 96), may be transferred by the commissioner into the name of the assignees. 7 & 8 Vict. c. 96, s. 15.

shares are transmitted by marriage or death (*u*). 19, post, App. 89). The company are not bound the execution of any trust, to which shares may be and receipts for money, given by the person in wh any share stands in the books, are a sufficient dis the company (*x*). (*Id.*, s. 20, post, App. 89).

The rights, *inter se*, of vendors and purchasers and also of letters of allotment and scrip certificate discussed in a future section of this work.

5. Actions to recover calls made on shares.

5. Persons who have subscribed for shares, or t representatives, are required to pay calls; and wit to the provisions in that act or the special act cont enforcing the payment of calls, the word "share includes the legal personal representatives of suc holders (*y*). (*Id.*, s. 21, post, App. 90). The may, from time to time, make calls upon sharehol vided that twenty-one days' notice, at least, be each call, and that the calls be made as prescri every shareholder is liable to pay the amount of th made by the company (*z*). (*Id.*, s. 22, post, App.

(*u*) As to the court in which probate or letters of administration ought to be granted, to pass an interest in shares, see *Ex parte Horne*, 7 B. & C. 632; S. C., 1 Man. & Ry. 529: *Smith* v. *Stafford*, 2 Wils. 166.

(*x*) It seems that a mortgagee of shares should give notice of his incumbrance, to the company, otherwise he may lose his lien. *Cumming* v. *Prescott*, 2 Y. & Coll. 488; *Ex parte Waithman*, 1 Mont. & A. 364.

(*y*) This is a very important provision. When the executors of an original subscriber to a railway company are liable to pay calls made in the lifetime of the testator, as well as those made after his death, see *Fyler* v. *Fyler*, 2 Railway Cases, 813; 3 Beav. 550. As to when the administrator of a subscriber to canal, who died before th for making it, could not proprietor, see *Weald of Company* v. *Robinson*, 5

(*z*) Circumstances may proceedings of a comp would authorise the Court Bench to issue a mandam pel the company to ma shareholders. See *R.* v. *toria Park Company*, 1 But, as the creditors of may now recover their judg from shareholders who ha up the full amount of t it is probable that the reme damus will not, in such c sorted to. See 8 Vict. c. 37, post, App., 92.

calls are not paid on the day appointed, interest on the amount of the call is payable to the company. (*Id.*, s. 23, post, App., 90). The company may agree to pay interest to a shareholder who pays money in advance of calls. (*Id.*, s. 24, post, App., 90). If a shareholder fails to pay a call on the day appointed, the company may sue him for the amount, with interest, in any court of law or equity. (*Id.*, s. 25, post, App., 90).

In any action or suit to be brought by the company against any shareholder, to recover any money due for any call, it shall not be necessary to set forth the special matter, but it shall be sufficient for the company to declare (*a*) that the defendant is the holder of one share or more in the company, (stating the number of shares), and is indebted to the company in the sum of money to which the calls in arrear shall amount, in respect of one call or more upon one share or more, (stating the number and amount of each of such calls), whereby an action hath accrued to the company by virtue of that and the special act (*b*). (*Id.*, s. 26, post, App., 90).

On the trial or hearing of such action or suit, it shall be sufficient to prove that the defendant, at the time of making such call, was holder of one share or more in the undertaking, and that such call was in fact made, and such notice thereof given as is directed by that or the special act; and it shall not be necessary to prove the appointment of the directors who made such call, nor any other matter whatsoever: and thereupon the company shall be entitled to recover what shall be due upon such call, with interest

(*a*) For a form of the declaration, see post, Appendix.

(*b*) In some of the earlier railway statutes, a power was given to recover calls by actions of debt or on the case. See *Huddersfield Canal Co.* v. *Buckley*, 7 T. R. 36; *Miles* v. *Bough*, 3 Q. B. 845.

thereon, unless it shall appear either that any such ceeds the prescribed amount, or that due notice of s was not given, or that the prescribed interval betw successive calls had not elapsed, or that calls amou more than the sum prescribed for the total amount in one year had been made within that period (*c*). 27, post, App., 91).

The production of the Register of Shareholders facie evidence of the defendant being a shareho (*Id.*, s. 28, post, App., 91).

It is now proposed to treat of the evidence whi cessary to support an action for calls. Proof must that a notice of the call was given strictly in ac with the directions contained in the statute. Thu an act provided, that, when any notice was to be g the trustees, such notice should be in writing or signed by three or more of the trustees, or their clerks for the time being by their order, it was that a notice signed with the names of the clerk trustees, but signed in fact not by such clerks, b clerk employed by them, was insufficient; altl seems that a signature by one of the two joint clerl

(*c*) As to what pleas will be allowed to be pleaded together in an action brought to recover calls, see *The South-eastern Railway Co.* v. *Hebblewhite*, 2 Railway Cases, 247; *The South-eastern Railway Co.* v. *Cook*, Id. 250; *London and Brighton Railway Co.* v. *Wilson*, 1 Railway Cases, 530; 6 Bing. N. C. 135: *The Thames Haven Railway Co.* v. *Mount*, 3 Railway Cases, 441.

(*d*) As to what is a proper mode of keeping such a register, see *The London Grand Junction Railway Co.* v. *Freeman*, 2 Man. & G. 60(Railway Cases, 468; *The ton Dock Co.* v. *Richards* G. 448; *The Birmingha and Thames Junction R* v. *Locke*, 1 Q. B. 256; *T Grand Junction Railwa Graham*, Id. 271; *Miles* 3 Q. B. 845; *The Aylesbu Co.* v. *Thompson*, 2 Rail 668; *The Cheltenham Western Union Railway C* 9 Car. & P. 55; *The W Railway Co.* v. *Bernard*, 3

stees, in the name of the two, would have been suffi-ent(*e*). In the same case it was also decided, that an der by the trustees, requiring the parties to pay the ount of the call at a bankers', "to the account of the trea-er to the trustees," was a proper mode of requiring the l to be paid. It is no objection that the resolution of the ectors whereby the call is ordered, specified no place for payment, provided the notice which is given in pur-nce of the resolution be explicit upon this point(*f*).

n another case it appeared, that, by a clause in the rail-y act, the directors were empowered from time to time, to ke such calls as they from time to time should find ne-sary; and twenty-one days' notice, at the least, should be en of every such call, by advertisement in certain news-pers; and all shareholders were required to pay such ls "to such person, at such time, at such place, and in h manner as the directors of the said company shall from e to time direct or appoint, for the use of the said under-ing." Upon the trial of an action brought to recover calls m the defendant as a proprietor of shares, it appeared t the directors had passed resolutions requiring the pay-nt of the calls, but none of the resolutions specified the ace where, or the person to whom, the payment was to be ade; but the notices, signed by the clerk and secre-ry, "by order of the directors," and inserted in the news-pers, as required by the act, stated, that the directors ving resolved to make a call for £—— per share, the pro-ietors were required to pay the said call on a day men-oned to certain bankers. The Court of Exchequer held, at the notice was sufficient, and that the directors ight fix the time, place, and manner of payment after

(*e*) *Miles* v. *Bough*, 3 Q. B. 845. *Railway Co.* v. *Biddulph*, 2 Railway
(*f*) *The Great North of England* Cases, 401.

the original resolution had been made, and by a distinct act (*g*).

In a somewhat similar case the Court of Common Pleas was clearly of opinion that it was wholly unnecessary that the original resolution should state the time or place of payment (*h*). And it has been said, that, if a statute contains no express direction that a notice of calls being made shall be given, still a party cannot be sued for non-payment of a call till he has received notice thereof (*i*). The rule is, that when an action is given only if the party shall neglect or refuse to pay, reason and justice require that the party should have notice (*k*). The result of the cases decided previous to the 8 Vict. c. 16, seems to be, that, if the statute specifies the mode in which notice of a call is to be given, that mode must be strictly observed; but if no specific directions appear in the statute, then a notice in writing, addressed to the shareholder, properly signed, should be delivered to him.

The foregoing cases will furnish the principles upon which the statute 8 Vict. c. 16, will be construed with respect to notices of calls; and the minute provisions made by that statute, as to advertisements, and the mode of giving and serving notices, will prevent many inconveniences which would otherwise have arisen (*l*).

(*g*) *The Sheffield, Ashton, and Manchester Railway Company* v. *Woodcock*, 7 M. & W. 574; 2 Railway Cases, 522.

(*h*) *London and Brighton Railway Company* v. *Fairclough*, 2 Man. & G. 674; 2 Railway Cases, 544.

(*i*) *Painter* v. *Liverpool Oil Gas Company*, 3 Ad. & E. 433; *Brook* v. *Jenney*, 2 Q. B. 271; *Edinburgh and Leith Railway Company* v. *Hebblewhite*, 6 Mee. & W. 716.

(*k*) *Miles* v. *Bough*, 3 Q. B. 845.

(*l*) See, as to the service of notices on shareholders, 8 Vict. c. 16, s. 136; on joint proprietors of shares, *Id.*, s. 137; as to notices by advertisements, *Id.*, s. 138; and as to the authentication of notices, *Id.*, s. 139; post, App. 109, 110. The following case has been decided:—An act for making a railway from Dublin to Drogheda enacted, that service of a writ upon a secretary of the company, or at the company's office, or by delivering it to some inmate at such office, or at the abode of the secretary, or, in case the same respect-

some cases where a defendant cannot take the
t a notice requiring him to pay calls has not
Thus, if a party expressly promise to pay a de-
s, the jury may infer that a proper legal notice
nless the plaintiffs affirmatively shew, as part of
at an informal notice was in fact sent to the
When the Court does not know the facts, an
ıise may enable them to infer that what is right
ıe; but when the facts are known, and they are
the promise does not make them sufficient (*m*).
e the declaration averred, "that the defendant
ice of the calls, to wit, by notice in writing,
e then clerks of the trustees, and then left at the
lace of abode of defendant," it was contended,
ɔe was averred, and not excused in the declara-
ise to pay did not entitle the plaintiff to succeed
ı; but the Court overruled that objection (*n*),
rdict it was held to be no objection in arrest
, that the declaration did not expressly state
lls were authorised to be made by the trus-

necessary to prove that the calls were made at
ıuthorised by the statute; and it seems that a
o was a party to the making of an illegal call,
ɔed from setting up the illegality of the call as
an action for calls brought against him. In

: be found or known,
ıny other agent of the
any one director of
y, should be deemed
The company had an
ı; and it was held,
ummons against the
to be served in Ire-
ervice of an English
s upon a director in

London was void; and the Court set aside a judgment founded thereon. *Evans* v. *The Dublin and Drogheda Railway Company*, 2 Dow. & L. 865; 14 Law J., Exch., E. T., 1845, 245.

(*m*) *Miles* v. *Bough*, 3 Q. B. 845.

(*n*) See *Burgh* v. *Legge*, 5 M. & W. 421. Also, 2 Stark. on Ev. 229, n. (*f*), 3rd ed.

(*o*) *Miles* v. *Bough*, 3 Q. B. 845.

the case of *The Stratford and Moreton Railway Co.* v. *Stratton* (*p*), a company were empowered to carry certain works, and the committee were authorised to make calls for money upon the proprietors, not exceeding 10*l.* per share, from time to time, as they should find necessary; but that no calls should be made at the interval of less than three months from each other. None of the powers of the act were to be put in force till 33,500*l.* were subscribed. The committee began the works before that sum was subscribed, and made a single order, calling on the proprietors for several payments of 10*l.* each, to be made at intervals of three months. A subsequent act recited, that the capital, 33,500*l.*, had not been subscribed, but that the company had proceeded in the works, incurred debts, &c., and that a certain sum was due from defaulters in the payment of calls; it provided for carrying on the works and for making further calls, and enacted, that the powers, &c. of the former act (except where expressly altered) should remain vested in the company, though the 33,500*l.* had not been subscribed. Upon these facts, Lord Tenterden, C. J., said, "I think these calls were not regular according to the statute. By the act the calls are to be made at intervals, and the committee are to judge, from time to time, of the necessity of making them. Here several are made at once, to an amount which may probably, not become necessary in the time over which they extend; and if so, the residue must be lodged with bankers', or placed elsewhere, at the peril of the proprietors. I think it was not the intention of the act that they should be exposed to this hazard. But it is contended that the subsequent statute recognises these calls as valid. The statute takes notice, in the recital, that the whole sum of 33,500*l.*, mentioned in the former act, has not been raised

(*p*) 2 B. & Ad. 518.

ction to infer, from such expressions as appear in the of this statute, that the Legislature sanctioned what not appear they even knew. The argument on the of estoppel might have applied if any person had ed astray by the conduct of the defendant (*q*), but a fact, one of a committee who have made certain t warranted by law, and in part paid them. Who- e paid those calls might have known that he was iged to do so: his paying them was his own fault; person has a right to allege that he was misled by of the defendant." So, in another case (*r*), where the act provided that the whole of the capital should be bed before the powers and provisions of the act should in force, and the company made a call on the shares the subscriptions were completed, and commenced an to recover the call so made after the whole capital bscribed, it was decided that the completion of the ption list was necessary to enable the company to the call, and that the action was not maintain-

With respect to the forfeiture of shares, the stat. c. 16, enacts, that, if any shareholder fail to pay ll payable by him, the directors may, if the call is

6. Forfeiture of shares for non-payment of calls.

the share forfeited; and that whether the company have sued for the call or not (*s*). (*Id.*, s. 29, post, App., 91). But before a share can be declared to be forfeited, the directors must give twenty-one days' notice to the shareholder; such notice to be sent as is prescribed in the act (*t*). (*Id.*, s. 30, post, App., 91). Nor does the declaration of forfeiture take effect until it has been confirmed at a general meeting of the company; and such general meeting may direct the forfeited share to be sold, or otherwise disposed of (*u*). (*Id.*, s. 31, post, App., 91). Forfeited shares may be sold by public auction or private contract. (*Id.*, s. 32, post, App., 92). A good title to the purchaser of a forfeited share may be made in the manner prescribed in the act. (*Id.*, s. 33, post, App., 92). The company may not sell more shares belonging to a defaulter than are sufficient to pay the calls due, and interest and expenses; and the overplus, if any, must be paid to the defaulter. (*Id.*, s. 34, post, App., 92). And if the calls, interest, and expenses are paid by the defaulter before

(*s*) Certain directors of a company subscribed the parliamentary contract for a large number of shares, for the purpose of complying with the standing orders in Parliament, and signed a memorandum that they held them in trust for the company, but never registered themselves as shareholders after the bill passed, or paid any deposit on the shares; and the directors having afterwards taken proceedings to declare a bonâ fide shareholder's shares forfeited, for non-payment of a third call on the shares held by him, the shareholder filed his bill for relief, and prayed that the directors might be restrained from declaring his shares to be forfeited. The Vice-Chancellor held, that, upon the face of the bill, there was a plain equity for the plaintiff to be relieved, and that the directors could not partially call upon some shareholders to pay calls, and not call upon others. *Preston* v. *The Grand Collier Dock Company*, 2 Railway Cases, 335; 11 Sim. 327.

(*t*) When equity will not relieve a shareholder whose shares have been forfeited for non-payment of calls, although the omission to pay the calls arose from accidental circumstances, see *Sparks* v. *Liverpool Waterworks Company*, 13 Ves. 428; and see *Burdett* v. *Rawson*, 9 Jur. 341.

(*u*) If it is necessary to plead that shares have been forfeited, the plea will be bad, unless it avers that the forfeiture was confirmed at a general meeting of the company. *The Edinburgh, Leith, and Newhaven Railway Company* v. *Hebblewhite*, 6 M. & W. 707.

ɪgage or bond, and may mortgage the undertaking
e future calls on the shareholders. (*Id.*, s. 38, post,
93). If any mortgage or bond be paid off, it may be
owed. (*Id.*, s. 39, post, App., 93). If, by the special
ɔney cannot be borrowed until a definite portion of
is subscribed, or if the authority of a general meet-
ecessary, the certificate of a justice is sufficient evi-
f the first, and a signed copy of the order of a general
g is sufficient evidence of the second fact. (*Id.*, s. 40,
App., 93). Mortgages and bonds must be by deed
amped, and forms are given in the act (*x*). (*Id.*, s. 41,
App., 93). Mortgagees or obligees are not preferred
son of the priority of their mortgages or bonds, or of
eting at which they were authorised. (*Id.*, ss. 42, 44,
App., 93, 94). Although future calls on shares are
ged, the company may, nevertheless, receive and ap-
ch calls. (*Id.*, s. 43, post, App., 93). A register of
ges and bonds must be kept by the secretary; and all
olders, mortgagees, and bond creditors may, at all
able times, peruse the same. (*Id.*, s. 45, post, App.,
Mortgages and bond debts may be transferred by deed,
form is given in the act; (*Id.*, s. 46, post, App., 94);
e transfer must be registered with the secretary, other-

The company may fix a time in the mortgage or bond for the re-payment of the money, and at the period so fixed it becomes payable. (*Id.*, s. 50, post, App., 94). If no time be fixed, either party may give the other six months' notice, provided twelve months have elapsed from the date of the instrument. The mode of giving notice is prescribed in the act. (*Id.*, s. 51, post, App., 94). After the expiration of six months' notice, given by the company, all further interest ceases to be payable. (*Id.*, s. 52, post, App., 95). If, by the special act, the mortgagees are empowered to enforce payment by the appointment of a receiver, then, if interest be unpaid for thirty days, or the principal for six months, the mortgagee, without prejudice to his right to sue at law or equity, may require that a receiver be appointed. (*Id.*, s. 53, post, App., 95). . An application for a receiver must be made to two justices, who, by order, may appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment, until the principal or interest due has been recovered. (*Id.*, s. 54, post, App., 95). The books of account of the company are at all times open to mortgagees and bond creditors. (*Id.*, s. 55, post, App., 96).

It is important to consider the effect of the statute 8 Vict. c. 16, with reference to the recovery of money lent to railway companies on mortgage or bond. If the special act authorises the appointment of a receiver, then, under the provisions of the 54th section, a speedy remedy is given to mortgagees, enabling them to recover the principal and interest due on the mortgage; but this remedy can in no case be extended to bond creditors. In the absence of this power to appoint a receiver (*y*), it becomes necessary to ascertain what other remedies may be resorted to. And,

(*y*) This power to appoint a receiver was given by only twenty-two, out of sixty-eight railway acts passed 8 & 9 Vict. See Biggs's Collection of Special Railway Acts.

t has been decided, on the construction of a railway
s containing nearly similar provisions to the 8 Vict.
that the land on which the railway is made does not
r the mortgage, and that a mortgagee is not entitled
ıtain ejectment. The Court, in coming to this deter-
ın, said, that there was no reason to suppose that the
ture intended so inconvenient a thing to the public
company, as obliging the company to part with that
y by which their undertaking was carried on (*z*).
r can an action at law be maintained against the com-
ı the mortgage-deed. This was decided by the Court
mon Pleas in *Pontet* v. *The Basingstoke Canal Com-*
). In that case Chief Justice Tindal says, "The
Parliament are public acts, and they enable the com-
raise the money upon the credit of the undertaking,
e rates or duties granted; and it is distinctly said
e creditors shall be creditors on the rates or duties in
degree one with another. This is not, therefore, a
y which gives the plaintiff any right of action in a
f common law. It would be most destructive to the
engaged if they were held to be so liable." It seems,
ıre, that the only remedy which a mortgagee can re-
, in the absence of the power in the special act before
l to, is to apply to a court of equity for relief (*b*); and
uch an application it appears to be a rule that all the

ɔe d. *Myatt* v. *St. Helen's Company*, 2 Q. B. 364; S. ıilway Cases, 756; and see , post, 141. As to mort- ·en by the trustees of a turn- e *Doe* d. *Watton* v. *Pen-* Q. B. 757; *Doe* d. *Levy* v. ld. 757; *Pardoe* v. *Price*, : W. 427; 13 M. & W. 267. Bing. N. C. 433; 3 Hodges, also *Pardoe* v. *Price*, 11 M. & W. 427; and *Same* v. *Same*, 13 M. & W. 267.

(*b*) It is probable that a mandamus will lie in some cases. See *Doe* d. *Myatt* v. *St. Helen's Railway Company*, 2 Q. B. 372, per Coleridge, J.; *R.* v. *The Margate Pier Company*, 3 B. & Ald. 220; *Pardoe* v. *Price*, 13 M. & W. 267, arguendo; and *R.* v. *Comm. of St. Paul's*, *Shadwell*, 1 Man. & Ry. 591.

other mortgagees must be made parties to the suit. Th in the case of *Mellish* v. *Brooks* (*d*), where a bill had b filed by a mortgagee of turnpike tolls, praying that a ceiver might be appointed, to enable the plaintiff to reco his mortgage debt and interest, Lord Langdale, M. R., serves, "As to the form of the suit, it is to be obser that the tolls which are collected under the acts are the se rity to which the plaintiff and all other persons who h lent money on the credit of the acts are entitled; that plaintiff is one of several, and is entitled to the ben of only a share of the tolls, namely, a share bearing a proportion to the whole as the amount due to him bear the aggregate amount of all the other sums borrowed on credit of the tolls; and the question is, whether the pl tiff, in the absence of the other mortgagees, can sue alone his share. He asks to be paid what is due to him out the monies received or to be received under the acts of P liament, and that a receiver of the same may be appoint but the other mortgagees are interested in those monies, the plaintiff cannot be paid in full without diminishing fund out of which they are entitled to be paid; and un these circumstances, I am of opinion, that, in this form suit, the plaintiff is not entitled to the general relief wh he prays (*e*)."

With respect to bond creditors, it is to be observed, t by the form (*g*) of the bond, the railway company are bou under their common seal, to pay the obligee a certain s of money on a day named; and no reference being made the security of the undertaking, or the rates, tolls, &

(*d*) 3 Beav. 22. See also *Doe* d. *Banks* v. *Booth*, 2 B. & P. 219.

(*e*) A mortgagee of tolls may recover more than six years' interest on his debt, the 42nd sect. 3 & 4 W. 4, c. 27, not being applicable. *Mellish* v. *Brooks*, 3 Beav. 22; see *Hodges* v. *The Croydon C Company*, Id. 86.

(*g*) See the form, post, App.,

ems that a bond creditor may sue the company upon bond in a court of law. And although the 44th section of statute (*h*) may possibly, in some cases, operate so as to ify the interference of a court of equity for the purpose rotecting other creditors, it is not by any means clear ; an injunction would be issued to restrain an action at on a bond. In *Hill* v. *The Proprietors of the Manches-nd Salford Water-works* (*i*) it was decided that a bond ld be put in force against a company incorporated by nte, although in one of the sections it was declared that bond creditors should be equally entitled to a claim or on the rates, and without any preference by reason of priority of date of any securities, or on any account atsoever. It was intimated that the effect of this section s to give a lien to the holders of bonds; but still the nd was a security of itself, and might be so enforced. , it was decided in equity, in the case of *Perkins* v. *ritchard* (*k*), by the Vice-Chancellor of England, that there s no equity to entitle the mortgagees of rates and tolls restrain a subsequent mortgagee of the lands from en-rcing his right, although the lands in mortgage contri-uted materially to earn the rates and tolls.

If money is borrowed by companies in a manner unau-horised by their acts of incorporation, the securities have no gal validity (*l*). In 1844 a committee of the House of ommons reported that large sums of money had been ille-ally borrowed by railway companies on loan or mortgage, nd that it was expedient that the practice should be dis-ontinued for the future, but that the then existing securi-

(*h*) See the section, post, App. 94.
(*i*) 2 B. & Ad. 544.
(*k*) 3 Rail. Cases, 95 ; 13 Sim. 277.
(*l*) See the preamble to sect. 19, 7 & 8 Vict. c. 85, post, App. 35. As to the doctrine of estoppel in cases where parties set up as a defence that a statute has been contravened, see *Hill* v. *The Manchester and Salford Water-works Company*, 2 B. & Ad. 544; *Doe* d. *Chandler* v. *Ford*, 3 A. & E. 649; *Doe* d. *Levy* v. *Horne*, 3 Q. B. 757; *Doe* d. *Watton* v. *Penfold*, Id. 757.

ties should be confirmed. In pursuance of this report, the stat. 7 & 8 Vict. c. 85, enacted, that, from and after the passing of that act [9th August, 1844], any railway company issuing any loan note, or other negotiable or assignable instrument purporting to bind the company as a legal security for money advanced to a railway company, otherwise than under the provisions of an act of Parliament, should, for such offence, forfeit a sum equal to the sum for which the loan note, or other instrument, purported to be a security. But it is provided, that any company might renew any loan note, or other instrument, issued by them prior to the passing of that act, for any period not exceeding five years from the passing of the same act (*m*).

And where any railway company, before 12th July, 1844, had issued or contracted to issue any such loan notes, or other unauthorised instruments, it is enacted that the company should pay off such loan notes, or other instruments, as the same might fall due, subject as was therein before provided; and until they should be so paid off, the loan notes, or other instruments, should entitle the holders to the payment of the principal sum and interest (*n*). The secretary of every company is also required to keep a registry of all such loan notes, &c.; such registry to be open to the inspection of certain interested parties (*o*).

8. Powers to raise money by new shares.

8. If it be not otherwise provided by the special act, the company may raise the money authorised to be borrowed, by creating new shares, instead of by borrowing; but such augmentation of capital must be authorised at a general meeting of the company. (8 Vict. c. 16, s. 56, post, App. 96). Such additional capital is subject to the same provisions, as to payment of calls, &c., as the original capital, except as to the

(*m*) 7 & 8 Vict. c. 85, s. 19, post, App., 35.

(*n*) 7 & 8 Vict. c. 85, s. 20, post, App., 36.

(*o*) 7 & 8 Vict. c. 85, s. 21, post App., 36.

le in the manner prescribed. (*Id.*, s. 58, post, App., Such new shares vest in the shareholders who shall them, and pay the instalments due thereon; and if reholder fails for one month to accept them, or pay alments, the company may dispose of them. (*Id.*, s. , App., 96). If the old shares are not at a premium e capital is augmented, the company may issue the res on such terms as they think fit. (*Id.*, s. 60, post, 6).

any execution be issued against the company, and mnot be found sufficient whereon to levy, such ex- may (by order of the court, to be made after notice the shareholder) be issued against a shareholder to nt of his shares not then paid up; and the party to any such execution may inspect the Register of lders, to ascertain the names of the shareholders. 6, post, App., 92). If the shareholder, by means of ecution, shall pay any money beyond the amount n him for calls, he is entitled forthwith to be reim- such sum out of the funds of the company. (*Id.*, s. , App., 92).

9. Remedies of creditors against shareholders.

that the proper course will be to apply for a scire facias in cases which may occur under sect. 36.

§ 5.—On the powers of Railway Companies to take lands to construct a railway, and herein of compensation.

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General powers to make the railway.

I. We have seen that the special act authorises the company to make the railway and works on the lands, &c., delineated and described on the parliamentary plans and book

remedies remain to a creditor of the company. The clause *expressly* limiting the liability of a shareholder to the amount of his share (see ante, 104) has been generally omitted in special railway acts, since the passing of the Consolidation Acts. See Bigg's Collection of Special Railway Acts.

ence (*a*). These lands may be purchased by the by agreement made with the owners; but if no ement be made, then the company are empowered, s clauses contained in the Lands Clauses Consoli- ct, (commonly called the compulsory clauses), to nds; and compensation is awarded to the owners persons, in the manner prescribed by the act. The are also authorised, as we shall see hereafter, by ay Clauses Consolidation Act, to make a tempo- of lands, roads, &c., whilst the railway is in the formation.

l powers, of a very extensive nature, are granted mpany, to enable them to construct the railway accommodation works connected therewith. By vay Clauses Consolidation Act, 8 Vict. c. 20, the are authorised, subject to the provisions and re- in the special act and Consolidation Acts contained, e any of the following works; (that is to say),

may make or construct, in, upon, across, under, or lands, or any streets, hills, valleys, roads, railroads, oads, rivers, canals, brooks, streams, or other waters, e lands described in the said plans, or mentioned d books of reference, or any correction thereof, such y or permanent inclined planes, tunnels, embank- queducts, bridges, roads, ways, passages, conduits, iers, arches, cuttings, and fences, as they think

may alter the course of any rivers not navigable, streams, or watercourses, and of any branches of

, 104. These plans and ference are required by the ders in Parliament (see Orders, ante, 19; Lords' e, 28) to be deposited at ces where they may at all times be examined by parties interested: see 1 Vict. c. 83, post, App. 3. As to deviations from the line delineated on the plans, see 8 Vict. c. 20, s. 15, post, App. 162.

navigable rivers, such branches not being themselves navigable, within such lands, for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, roads, streets, or ways, or raise or sink the level of any such rivers or streams, roads, streets, or ways, in order the more conveniently to carry the same over or under, or by the side of the railway, as they may think proper:

They may make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway:

They may erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, machinery, apparatus, and other works and conveniences, as they think proper:

They may from time to time alter, repair, or discontinue the before-mentioned works, or any of them, and substitute others in their stead; and

They may do all other acts necessary for making, maintaining, altering, or repairing, and using the railway (*b*).

Lands taken by agreement.

And, first, as to the taking of lands by agreement. By 8 Vict. c. 18, s. 6, (post, App. 119), it is enacted, that the company may agree with the owners of lands (which by the interpretation clause extends to the owners of messuages, lands, tenements, and hereditaments, of any tenure (*c*)) by the special act authorised to be taken, and with all parties having any estate or interest in such lands, or by that or the special act enabled to sell and convey the same, for the absolute purchase thereof, for a consideration in money, and of all estates and interests therein, of what kind soever (*d*).

(*b*) 8 Vict. c. 20, s. 16, post, App. 162.

(*c*) See sect. 3, post, App. 118.

(*d*) As to the construction of agreements made between landowners and the company, see post, and *Manning* v. *The Eastern Counties Railway*, 12 M. & W. 237, post, 248.

r interest therein, to sell and convey or release the
the company, and to enter into all necessary agree-
r that purpose, and particularly for all or any of the
; parties; (that is to say), all corporations, tenants in
r life, married women seised in their own right or
to dower, guardians, committees of lunatics and
ustees or feoffees in trust for charitable or other
executors and administrators, and all parties for
being entitled to the receipt of the rents and pro-
y such lands in possession, or subject to any estate
, or to any lease for life, or for lives and years, or
, or any less interest.

his power to sell, &c., may be exercised by all
e-mentioned parties, (other than married women
to dower, or lessees for life, or for lives and
for years, or for any less interest), not only
f of themselves and their respective heirs, exe-
dministrators, and successors, but also for and
f of every person entitled in reversion, remain-
expectancy after them, or in defeasance of the
f such parties; and as to such married women,
they be of full age or not, as if they were sole and
e: and as to such guardians, on behalf of their

if they had respectively been under no disability: and al to such trustees, executors, and administrators, on beha of their cestui que trusts, whether infants, issue unbor lunatics, femes covert, or other persons; and that to the sam extent as such cestui que trusts, respectively, could have ex ercised the same powers, under the authority of that and th special act, if they had respectively been under no disabili (Sect. 7, post, App. 119).

Special provisions are also inserted to enable the compa to take a conveyance of copyholds, common lands, wa lands, and lands in mortgage, and to release lands from ex isting charges.

Copyhold land

As to copyholds, it is provided, that every conveyance copyhold lands to the company, shall be entered on the ro of the manor. (*Id.*, s. 95, post, App. 140). And within certain period afterwards, the company are required to pa the lord of the manor, compensation, to be assessed accord ing to the mode prescribed, for the enfranchisement of th lands. (*Id.*, s. 96, post, App. 140). The lands, when en franchised, are to be held in free and common socage; and if the lord fails to enfranchise the lands, the company may execute a deed-poll, in the manner provided in the case o a purchase of lands (*e*). (*Id.*, s. 97, post, App. 140). Rent payable in respect of copyhold lands may, in certain cases be apportioned in the manner prescribed. (*Id.*, s. 98, post App. 141).

Common and waste lands.

As to common and waste lands, it is provided, that th compensation in respect of the right in the soil shall be paid by the company to the lord of the manor. (*Id.*, s. 99, post App. 141). And, upon payment or deposit thereof in the Bank, a conveyance from the lord of the manor to the com pany will operate as if he had been seised in fee simple; and in default of such conveyance, the company may execute

(*e*) See, as to this conveyance, post, 336.

ed-poll, in the manner provided in the case of a purchase f lands. (*Id.*, s. 100, post, App. 141). The compensation to e paid to the commoners is determined by agreement, made etween the company and a committee of commoners. (*Id.*, . 101, post, App. 142). The members of such committee re not to exceed five in number, chosen by the commoners, t a meeting convened by the company, by public advertise- ent and notice. (*Id.*, ss. 102, 103, post, App. 142). The ommittee may then agree with the company, as to compen- ation for the extinction of the commonable rights; and the ommittee receive the amount, and apportion it among the commoners. (*Id.*, s. 104, post, App. 142). If the committee and the company cannot agree, the compensation is deter- mined as in other cases of disputed compensation; (*Id.*, s. 105, post, App. 143); or, if no committee be appointed, then by a surveyor, to be appointed by two justices. (*Id.*, s. 106, post, App. 143). Upon payment or deposit of the money agreed upon or determined for compensation, the company may execute a deed-poll, in the manner provided in the case of a purchase of lands, and thereupon the lands vest in the company, discharged from all commonable and other rights. (*Id.*, s. 107, post, App. 143).

Lands in mortgage.

To relieve lands taken by the company from being encumbered by existing mortgages, the company are empowered to pay off all mortgages affecting lands, upon giving notice to the mortgagee, or paying six months' additional interest; and the mortgagee must then convey his interest in the lands to the company. (*Id.*, s. 108, post, App. 143). If the mortgagee fails to convey the lands, or to adduce a good title, the company may deposit the monies in the Bank, and execute a deed-poll in the manner provided in the case of a purchase of lands; and all the interest of the mortgagee thereupon vests in the company. (*Id.*, s. 109, post, App. 144). If the mortgaged lands are of less value than the mortgage debt, a provision is made for ascertain-

ing the amount of compensation. (*Id.*, s. 110, post, App. 144). A provision is also made for completing the title of the company, without affecting the remedies possessed by the mortgagee, under the mortgage-deed, against the mortgagor. (*Id.*, s. 111, post, App. 144). In like manner, a provision is made for ascertaining the compensation and completing the title of the company, where a part only of the mortgaged lands is taken, and the mortgagee does not consider the remaining part a sufficient security. (*Id.*, ss. 112, 113, post, App. 145). If a mortgagee is compelled to accept the money secured by a mortgage at an earlier period than the time limited in the mortgage-deed, he is entitled to be paid the costs of re-investing the money, and also compensation for any loss he may sustain by the re-investment. (*Id.*, s. 114, post, App. 146).

Rent-charges.

Where lands are subject to rent-charges, it is provided that differences respecting the consideration to be paid for releasing them from such charges, are to be determined as other cases of disputed compensation. (*Id.*, s. 115, post, App. 146). If only a part of the lands charged be required, then such part may be released, by agreement between the owner of the lands and the party entitled to the rent-charge on the one part, and the company on the other part; otherwise by two justices: but if the remaining lands are a sufficient security, then, by consent, such remaining lands may be made subject to the whole charge. (*Id.*, s. 116, post, App. 146). If the party entitled to the rent-charge fails to release it, or to make a good title, the company may deposit the compensation money in the Bank, and execute a deed-poll in the manner provided in the case of a purchase of lands; and thereupon the rent-charge becomes extinguished. (*Id.*, s. 117, post, App. 147). If the lands released were subject to the charge, jointly with other lands, such other lands remain liable for the whole or the remainder of the charge, as the case may be; and the company may

of the remaining portion is to be apportioned, by
at, or by two justices; and after such apportion-
e lessee is liable only for the rent so apportioned.
19, post, App. 147).

bove-mentioned powers—to enfranchise copyhold
o release lands from rent,—and to agree for the ap-
ent of rents, may be exercised by every party who
d to sell and convey lands by the 7th section of the
lready referred to (*f*). (*Id.*, s. 8, post, App. 120).
s entitled to lands absolutely, may convey them in
tion of an annual rent-charge, (*Id.*, s. 10, post,
0), secured on the tolls or rates payable to the com-
d recoverable, when in arrear, by action or distress.
1, post, App. 121). The before-mentioned powers
nd convey lands, given by sect. 7 of the statute,
o lands which the company may be authorised to
extraordinary purposes (*g*). (*Id.*, s. 12, post, App.
nd such lands may be sold by the company, and
ds in lieu thereof be purchased by them. (*Id.*, s.
App. 121). But such subsequent purchases, can-
nade from persons, under a legal disability to sell
ey the same. (*Id.*, s. 14, post, App. 121).

Lands taken for extraordinary purposes.

low high-water mark, or on any navigable river, without the consent of the Commissioners of Woods and Forests, and the Lord High Admiral. If such works are constructed, contrary to the provisions of the act, they may be abated at the cost of the company. (8 Vict. c. 20, s. 17, post, App. 163).

Lands lying over minerals.

With respect to lands lying over mines or minerals, it is provided, that the company shall not be entitled to mines or minerals, under lands purchased by them, (except such part as shall be necessary to be used in the construction of the works), unless the same shall have been expressly purchased, and such mines shall be deemed to be excepted (*h*) out of the conveyances. (8 Vict. c. 20, s. 77, post, App. 180).

It is also specially provided, that the purchase-money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands, except under the provisions of the special act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provisions contained in the act, be less than shall be determined by the valuation of two able practical surveyors; and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall nominate. (8 Vict. c. 18, s. 9, post, App. 120).

Lands taken under the compulsory clauses.

As to lands which may be taken by the company under the compulsory clauses in the statute, it is first provided that these powers shall not be put in force, unless the whole of the estimated capital of the company has been subscribed by them under a contract; (*Id.*, s. 16, post, App. 121); and a certificate from two justices, that the whole of the

(*h*) As to compensation to owners of mines, &c., see post, 187.

been subscribed, is sufficient evidence thereof (*i*). post, App. 122). Nor can lands be thus taken period prescribed by the special act, and, if no herein prescribed, not after the expiration of three the passing of the special act. (*Id.*, s. 123, post,

lowing mode of proceeding is prescribed when ny purchase or take lands under the compulsory First, they are directed to give notice (*k*) to all

wing may be the form of this certificate:—

No. 1.

of &c., and C. D., of &c., two of her Majesty's justices of the county of ——, assembled and acting together in Petty Sessions said county, on the application of the —— Railway Company, by an act of Parliament, intituled [*here insert the title of the* and on production of the subscription deeds of the said company, virtue and in pursuance of the authority vested in us by the said t the whole sum of [*here insert the amount of the capital of* , being the prescribed capital of the said company, as provided , has been subscribed for by persons under a contract binding eir heirs, executors, and administrators, for the payment of the y the said persons respectively subscribed.

Form No. 1. Certificate of justices that the capital of the company has been subscribed. (8 Vict. c. 18, s. 17, post, App. 122).

r hands, this —— day of ——, in the year of our Lord ——.

A. B.
C. D.

owing may be the form of this notice:—

No. 2.

The ——— Railway.

r a certain act of Parliament, intituled The Lands Clauses Conso- 845, the provisions of which are incorporated with the special Rail- after mentioned (*m*), it is enacted, that, when any railway company o purchase or take any lands which they are authorised to purchase company shall give notice thereof to all the parties interested in to the parties enabled by that act to sell and convey or release the of the said parties as shall, after diligent inquiry, be known to the by such notice shall demand from such parties the particulars of d interest in such lands, and of the claims made by them in respect that the company in such notice shall state the particulars of the ed, and that they are willing to treat for the purchase thereof, and ensation to be made to all parties for the damage that may be sus- n, by reason of the execution of the railway works. And whereas t it is also enacted, that, if, for twenty-one days after the service

Form No 2. Notice from the company to owners, lessees, &c. of lands, stating that lands are required for the railway, and that the company are willing to treat for the purchase thereof. (8 Vict. c. 18, ss. 18. 21, post, App. 122). For form of notice to occupiers, see post, 184.

lidation Acts are incorporated with the special act, in the manner already 104.

the parties interested in such lands, or to the parties enabled by the act to sell and convey, or release, the same, or such

of such notice, any party shall fail to state the particulars of his claim in respect of any such land, or to treat with the company in respect thereof, or if such party and the company shall not agree as to the amount of the compensation to be paid by the company, for the interest in such lands belonging to such party, or which he is by that or the special act enabled to sell, or for any damage that may be sustained by him, by reason of the execution of the works, the amount of such compensation shall be settled in the manner thereinafter provided for settling cases of disputed compensation. And whereas, by virtue of the —— Railway Act, [*insert title of special act*], All those parcels of land, tenements, and hereditaments mentioned in the schedule hereunto annexed [*or*, "particularly described in a map or plan hereunto also annexed," *as the case may be*], situate at &c., belonging or reputed to belong to you or to some or one of you, or in which you or some or one of you, have or hath, or claim or claims, some estate, share, interest, or charge in, over, or affecting the same, or some part thereof, or which you or some or one of you claim to be empowered to sell, release, and convey, are required to be taken and used by us the railway company incorporated by the said act, for the purposes thereof, and which lands, tenements, and hereditaments we are by the said act authorised to purchase or take. Now we the said company do hereby give you notice, that the said lands, tenements, and hereditaments are required by us for the purposes aforesaid, and that we are willing to treat for the absolute purchase thereof, and of every estate, share, right, interest, or charge in, upon, or affecting the same, which you, or any, or either of you, have or hath therein, or are or is by the said act or otherwise enabled to sell, release, or convey; and that we are also willing to treat as to the compensation to be made to you and all parties interested in the said lands, tenements, and hereditaments, for the injury or damage that may be sustained by you, or any or either of you, by reason of the execution of the works of or connected with the said railway. And take notice, that you, and each and every of you, are hereby required to state to the company, at our office at—— [*as the case may be*], the particulars of your estate and interest, or several estates and interests, in the said lands, tenements, and hereditaments, and of the claim, or several and distinct claims for compensation made by you, each and every of you, in respect thereof; and if, for twenty-one days after the service of this notice, you, or any one or more of you upon whom the same shall have been served, shall fail to state the particulars of your claim in respect of any of the said lands, tenements, and hereditaments, or to treat with the said company in respect thereof, or of the estate, share, right, interest, or charge in, upon, or affecting the same, which you may be enabled as aforesaid to sell, release, and convey, or if you shall neglect or refuse to agree, or shall not agree with the said company as to the amount of the compensation to be paid by the said company for the purchase of your interest in such of the lands, tenements, and hereditaments as belong to you, or for the purchase of the estate, share, right, interest, or charge as aforesaid, which you are enabled to sell, release, and convey as aforesaid, or for the compensation to be paid for any damage

› said parties as shall, after diligent inquiry, be known › company; and by such notice they are required to ad from such parties the particulars of their estate and

ıy be sustained by you, or any of you, by reason of the execution of any works authorised by the said act, then the company will proceed to pro- › amount of such purchase-money or compensation to be settled in the prescribed by the said act for settling cases of disputed compensation. d the —— day of ——, in the year of our Lord ——.

A. B. } *Directors of the said*
C. D. } *railway company.*

[*Or*, "E. F., *secretary* [or, '*treasurer*'] *of the said railway company.*"]

B., Esq., C. D., Esq., and all other par- claiming satisfaction or compensation for above-mentioned hereditaments, or for any , share, interest, or charge in or affect- he same, or any part thereof, or for any y or damage occasioned by the taking of foresaid hereditaments by the said com- , or otherwise by reason of making the railway, or on account of the execution of said act, and to all other persons whom it concern.

THE SCHEDULE *referred to in the foregoing Notice.*

those parcels of land as now staked, &c. [*as in the form, No.* 19, 85].

8. The above notice is sometimes accompanied with a blank schedule, to d up by the parties claiming the compensation, in a form similar to the ing:—

—— RAILWAY.

SCHEDULE *to be filled up by Parties claiming, &c.*

state the name, address, and ription of the party making claim.

the particulars of the estate, re, and interest in or upon the l lands in respect whereof the n is made, whether in respect n estate of freehold, &c.

etting forth, under separate titles, the various particulars which the rs and lessees are required to specify]. A schedule of this description may ily framed by referring to the contents of the following Notices, Nos. 3 and t, 156, 157; or, in lieu of such a schedule, the forms Nos. 3 and 4 in may be sent with the notice. As to the proper mode of serving the above s on owners and lessees, see 8 Vict. c. 18, ss. 19, 20, post, App. 122.

interest therein, and of the claims made by them in respect thereof; and every such notice must state the particulars of the lands so required, and that the company are willing to treat for the purchase thereof, and as to the compensation to be made to all parties, for the damage that may be sustained by them by reason of the execution of the works (*Id.*, s. 18, post, App. 122).

If, for twenty-one days after the service of this notice, any party fails to state the particulars of his claim in respect of the land, or to treat with the company in respect thereof (*l*), or if the party and the company do not agree

(*l*) The following forms, Nos. 3 and 4, may be used; and they may be altered so as to meet the circumstances of each particular case:—As to the mode of serving this notice, see 8 Vict. c. 18, s. 134, post, App. 151.

No. 3.

To the —— Railway Company.

Form No. 3. Notice from an owner in fee simple. of lands required to be purchased by the company, stating the particulars of his claim for compensation. (8 Vict. c. 18, ss. 21, 23, post, App. 122, 123).

Whereas, by a certain notice under the hands of A. B., &c., bearing date the —— day of —— last, I am informed that you intend to take and use, for the purposes in the said notice mentioned, all those parcels of land, tenements, and hereditaments mentioned &c. [*or*, "particularly described in a map or plan to the said notice annexed," *as the case may be*, containing by estimation —— acres, —— roods, and —— perches, or thereabouts], situate at &c., belonging or reputed to belong to me; and I am also required by the said notice, to state the particulars of my estate and interest in such lands, tenements, and hereditaments, and of the claim for compensation made by me in respect thereof, as in the said notice is particularly mentioned [*This recital will vary according to the nature of the notice which the company may have given*]. Now, I the undersigned E. F. do hereby, in pursuance of the requisition in the said notice contained, inform you the said company, that I am the owner in fee simple, of the said lands, tenements, and hereditaments mentioned or referred to in the said notice, and that I claim as compensation for the purchase-money for the same, and for the damage that may be sustained by me by reason of the execution of your railway works, the sum of £——. And take notice, that I am ready and willing, on payment of the said sum of ——, to sell, convey, and release to you the said company, all my estate, right, title, and interest in the said lands, tenements, and hereditaments, according to the provisions contained in the said acts of Parliament in your said notice mentioned. [*The following addition may be made to this notice, if it is considered desirable, (see post*, 159):—And, further, take notice, that, if my said claim of ——, as and for compensation as aforesaid, shall not be paid or accepted by you, I hereby, in pursuance of the provisions contained in the said acts, or in any other act or acts of Parliament, signify to

) amount of the compensation to be paid by the com-
r the interest in the lands belonging to such party,
h he is by the Lands Clauses Consolidation Act,
special act, enabled to sell, or for any damage that
sustained by him by reason of the execution of the
the amount of such compensation must be settled
manner provided for settling cases of disputed com-
on. (*Id.*, s. 21, post, App. 122).

The notice to treat.

n lands are sought to be taken under the above-
ned compulsory clauses, it is important that all the
nary matters required by the statute should be

lesire to have the amount of the said compensation to be paid to me
arbitration. And I hereby require you, the said company, to appoint
ator to act on your behalf in the matter of the said arbitration.]
e my hand, this —— day of ——, in the year of our Lord ——.

E. F.
of [*Insert place of abode*].

No. 4.

To the —— Railway Company.

Form No. 4. Notice from a tenant in tail or other party empowered to convey lands required by the company, stating the particulars of the claim for compensation. (8 Vict. c. 18, ss. 21, 23, post, App. 122).

s, by a certain notice [*as in Form No.* 3, *ante*, 156, *to* *, *then s follows*:—] Now, I, the undersigned E. F. do hereby, in pur-
the requisition in the said notice contained, inform you the said
that I am the tenant in tail of the lands, tenements, and heredita-
ntioned or referred to in the said notice [*or*, "that I am committee
inted of A. B., Esquire, a lunatic, the owner in fee simple of the
:., *as the case may be* (*a*) (*See the parties who may convey lands*, 8
8, *s.* 7, *post*, *App.* 119)], and that I claim, as compensation for the
money thereof, and for damage that may be sustained by me by rea-
e execution of your railway works, the sum of £ ——. And take
at I am ready and willing, on payment or deposit of the said sum of
sell, convey, and release to you the said company all and every estate,
e, and interest in the said lands, tenements, and hereditaments which
hat behalf authorised to do, according to the provisions contained in
cts of Parliament in your said notice mentioned.
e my hand, this —— day of ——, in the year of our Lord ——.

E. F.
of [*Insert place of abode*].

particulars of the estate, share, interest, or charge in respect whereof the claim is
uld be here inserted, whether in respect of an estate of freehold, copyhold, or lease-
e: if leasehold, for what term of years: if the claim be on account of any interest
as distinct from an estate in the lands, &c., the particulars of such interest or charge
stated: and if any claim be made on account of injury or damage caused by the
he lands, the particulars should be stated.

strictly observed by the parties interested in the pr
ings. As this is the first time it has been necessary to
tion the notices which the Consolidation Act (8 V
18) requires the company to give to the owners and
piers of lands, it is fit to say a few words concerning th
per mode of signing such notices; and it is recomm
that railway companies should, in all such cases, ol
the directions contained in the 139th section of the 8
c. 16, which enacts, that "every summons, notice, or
document, requiring authentication by the company
be signed by two directors, or by the treasurer, or the
tary of the company, and need not be under the co
seal of the company, and the same may be in writing
print, or partly in writing and partly in print."

By conforming to these directions, all technical
tions to the sufficiency of the signatures to such n
will be avoided.

The company should state accurately, in the not
treat, the quantities and situation of the lands requir
the railway works; and, for greater security, a plan is
rally annexed to the notice (*m*), or reference is made
parliamentary plan deposited at a specified place (*n*). I
mistake is made on the face of the plan, the compan
be unable to enter on any lands which may be omitt
A notice to treat, when given, cannot be revoked: th
no locus pœnitentiæ (*p*); for the relative situations of v
and purchaser are created by giving the notice (*q*), a
jury or other tribunal, when called upon to assess the
pensation, must do so with reference to the premises, a

(*m*) *Sims* v. *The Commercial Railway Company*, 1 Railway Cases, 431.

(*n*) See the form No. 2, ante, 154.

(*o*) See *Kemp* v. *The London and Brighton Railway Company*, 1 Railway Cases, 495, post, 244.

(*p*) *R.* v. *The Hungerford Market Company*, 4 B. & Ad. 327, po

(*q*) *R.* v. *The Commissio Manchester*, 4 B. & Ad. 332, n 242; *Doo* v. *The London and don Railway Company*, 1 F Cases, 257.

ibed in the notice to treat (*r*). The issuing of the treat is the foundation of the jurisdiction of the bitrators to assess compensation (*s*); but if a party in lands enters into negotiations with the com- agrees to waive the necessary notice to treat, wards estopped from taking the objection that he ived a notice (*t*); and, on the same principle, the after appearing before a jury, cannot object to an , on the ground that it does not disclose that a treat had been duly served (*u*).

he party who claims any estate or interest, in the osed to be taken, has received a notice from the requiring him to treat, he must, without loss of mine on the course which he will pursue. He may, twenty-one days mentioned in section 21, state the of his claim, and endeavour to treat with the com- the amount of compensation to be paid to him (*x*). e other hand, the party interested in the lands gives to the company, and takes no step to treat under sions of the 21st section, the company may then the case as one of disputed compensation, and may nder the 38th section, (post, App. 125), to give the days' notice of their intention to summon a jury to compensation, and this notice must also state what f compensation the company are willing to pay.

v. *The Commercial Rail-* ry, 1 Railway Cases, 375, When a variance will not nant, see *Walker* v. *The Blackwall Railway Com-* B. 744.

Bagshaw, 7 T. R. 363; *Mayor of Liverpool*, 4 ; *R.* v. *The Trustees of* h *Road*, 5 A. & E. 563.

The Committee for the land *Drainage*, 8 A. & E. 245.

(*u*) *R.* v. *The Trustees of Swansea Harbour*, 8 A. & E. 447.

(*x*) The party may, it seems, in this notice require that arbitrators should be appointed, according to the Form No. 3, ante, 156; but if the party who claims compensation intends that the case should go to a jury, then, as the liability of the company to pay the costs of the inquiry depends upon the sum which they may have previously offered, (8 Vict. c. 18, s. 51, post, App. 127), it will

On the receipt of this notice, the party who claims compensation has ten days allowed him to determine whether he will accept the offer made by the company, or not; and if he determines to decline the offer, he may declare his desire that the amount of the compensation shall be assessed by arbitrators, and not by a jury; for, by the Lands Clauses Consolidation Act (*y*), the party who claims compensation has now, in all cases, the option of having the amount of it (if it exceeds £50) assessed by arbitrators, provided he gives the company notice thereof in due time. If, therefore, the party be desirous of referring the question of compensation to arbitration, he must take care to serve a notice on the company, stating such to be his desire, before the expiration of ten days from the day when he received the company's notice. After that period has elapsed, the company are authorised to issue their warrant to summon a jury (*z*); and if the warrant is once issued, it will be too late to require the appointment of arbitrators. It is, however, to be observed, that *the company* have no option to require that the compensation shall be assessed by arbitrators; they can only issue a warrant to the sheriff, after having given the notice required by the 38th section (*a*).

Claims for compensation where the company have not given a notice to treat.

Cases may occur where lands have been taken, or injuriously affected, during the formation of the railway, and the party injured may, nevertheless, have never received any notice to treat, or offer of compensation, from the company. To provide for such cases, the 68th section of the 8 Vict. c. 18 (*b*) enacts, that, if any party shall be entitled to any compensation in respect of any lands, or of any interest

be proper to ascertain what amount of compensation the company are willing to pay. See, on this point, *Corregal* v. *The London and Blackwall Railway Company*, 5 Man. & G. 219; 2 Dow., N. S., 851; *R.* v. *The same*, 4 Railway Cases, 119.

(*y*) See 8 Vict. c. 18, s. 23, post, App. 123; Id., s. 68, post, App. 130.

(*z*) See 8 Vict. c. 18, s. 23, post, App. 123.

(*a*) See 8 Vict. c. 18, s. 38, post, App. 125.

(*b*) Post, App. 130.

The powers of the company to enter on lands to be purchased or permanently used.

The company may not, without consent, enter on any lands required to be purchased or permanently used, until they have paid the purchase-money or compensation for the same, or deposited it in the Bank: provided always, that,

the company, requiring compensation for lands taken or injuriously affected, and requiring the amount of compensation to be settled by arbitration, more than 50*l.* being claimed. (See 8 Vict. c. 18, s. 68, post, App., 130.

way from —— to ——, you have entered upon [*or*, "and taken"] certain parcels of land [*here describe the lands with particularity, as in the notice, Form No.* 2, *ante*, 153], for the purpose of making spoil banks and side cuttings thereon [*or*, "for the purpose of obtaining therefrom materials for the construction [*or*, 'repair'] of the said railway" [*describe the injuries done to the lands according to the facts*]], and for other purposes connected with the construction of the said railway, whereby the said lands have been damaged and injuriously affected*. Now, I the undersigned A. B., being the owner in fee simple of the above-mentioned lands, do hereby, in pursuance of the statute or statutes in that case made and provided, give you the said company notice, that I require you to pay me compensation in respect of my said lands, which you have [*or*, "taken"] damaged and injuriously affected as aforesaid, and in respect of my interest therein, and that the amount of my claim for compensation, by reason of the premises, is £——. And further take notice, that, unless you the said company are willing to pay to me the said sum of £——, and shall enter into a written agreement for that purpose within twenty-one days after the receipt by you of this notice, then it is my desire that the amount of compensation to be paid to me by you by reason of the premises shall be ascertained by arbitration, according to the provisions of the act or acts of Parliament in that case made and provided. And, if you the said company fail to pay me the said sum of £——, or to enter into such written agreement as aforesaid, within the said twenty-one days, then and in that case I do hereby request and require you to nominate and appoint an arbitrator to act on your behalf in the matter of the said arbitration.

Witness my hand, this —— day of ——, in the year of our Lord 18—.

A. B.,
of [*insert address*].

No. 6.

To the ——— Railway Company.

Form No. 6. A similar form where the owner requires a jury to assess the compensation. (See 8 Vict. c. 18, s. 68, post, App., 130).

Whereas &c. [*as in the Form No.* 5, *supra, to* *; *then proceed as follows:*] Now, I the undersigned A. B., being the owner in fee simple of the above-mentioned lands, do hereby, in pursuance of the statute or statutes in that case made and provided, give you the said company notice, that I require you to pay me compensation in respect of my said lands, which you have [*or*, "taken"] damaged and injuriously affected, as aforesaid, and in respect of my interest therein, and that the amount of my claim for compensation, by reason of the premises, is £——. And further take notice, that, unless you the said company are willing to pay to me the amount of the compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt by you of this notice, then it is my desire that the amount of the compensation to be paid to me by you by reason

lands into the Bank, and also giving to the party claiming compensation a bond with two sureties, conditioned for the payment of the amount of compensation when it is ascertained. (*Id.*, s. 85, post, App., 137). The money so paid into the Bank is to remain in the name of the Accountant-General, to the credit of the party interested in the lands, (*Id.*, s. 86, post, App., 137), and for his security, and may be withdrawn by the company, if the condition of the bond be performed, or be otherwise applied under the direction of the Court of equity. (*Id.*, s. 87, post, App., 137). If the Accountant-General's office be closed, the money may be

No. 8.

To the ——— Railway Company.

Form No. 8. A similar form where a tenant in tail, &c. requires a jury to assess the compensation. (See 8 Vict. c. 18, s. 68, post, App., 130).

Whereas &c. [*as in the Form No.* 5, *supra, to* *; *then proceed as follows:*—] Now, I the undersigned A. B., being the tenant in tail [*or*, "being committee duly appointed of E. F., Esq., a lunatic, the owner in fee simple," *as the case may be, setting forth the estate and interest of the parties in the lands; see Form No.* 4, *ante*, 157] of the above-mentioned lands, do hereby, in pursuance of the statute or statutes in that case made and provided, give you the said company notice, that I require you to pay compensation in respect of the said lands which you have [*or*, "taken"] damaged and injuriously affected as aforesaid, and in respect of my estate and interest therein, and that the amount of the claim for compensation by reason of the premises is £——. And further take notice, that, unless you the said company are willing to pay or deposit the amount of the compensation so claimed, and enter into a written agreement for that purpose within twenty-one days after the receipt by you of this notice, then it is my desire that the amount of the compensation to be paid by you by reason of the premises shall be settled by a jury according to the provisions contained in the act or acts of Parliament in such case made and provided. And, if you the said company fail to pay or deposit the said sum of £——, or to enter into such written agreement as aforesaid, then and in that case I do hereby request and require you, within twenty-one days after the receipt by you of this notice, to issue your warrant to the sheriff of —— [*here insert the county*], or other proper officer, to summon a jury [*if a special jury is desired, alter the form accordingly: see* 8 *Vict. c.* 18, *s.* 54, *and post*, 176] for settling the amount of the said compensation as in the said act or acts is directed and provided.

Witness my hand, this —— day of ——, in the year of our Lord 18—.

A. B.,
of [*here insert address*].

deposited in the Bank, and placed to his credit at a subsequent period. (*Id.*, s. 88, post, App., 138). If the company or their contractors wilfully enter and take possession of any lands without consent, and without observing the directions above mentioned, they are liable to pay 10*l.* to the party in possession, as a penalty; and if, after a conviction, they still continue in unlawful possession of the lands, they are liable to pay 25*l.* for every day they so remain in possession (*d*). (*Id.*, ss. 89, 90, post, App., 138, 139). If the owner or occupier, or any other person, refuses to give up the possession of any lands which the company are authorised to enter upon, the sheriff is empowered to deliver possession to the company, and all costs incurred thereby must be paid by the party refusing to give up possession. (*Id.*, s. 91, post, App., 139).

Taking part of a house or of small parcels of land.

No person can be required to sell or convey a part only of any house or building (*e*). (*Id.*, s. 92, post, App., 139). And if any lands not situate in a town, or built upon, be so cut through as to leave, either on one or both sides thereof, a less quantity than half a statute acre, the owner thereof may require the company to purchase the same, unless he has other land adjoining, into which it can be conveniently thrown. (*Id.*, s. 93, post, App., 139). And, if less than half a statute acre be left on either side of the works, or land of less value than the expense of making a communication, then the company may, in certain cases, require the owner to sell such piece of land. (*Id.*, s. 94, post, App., 139).

Powers to take

II. The company are also authorised to take temporary

(*d*) See *Hutchinson* v. *The Manchester, Bury, and Rossendale Railway Company*, 10 Jurist, 361.

(*e*) See *R.* v. *London and Greenwich Railway Company*, 3 Q. B. 166; post, 191: *Taylor* v. *Clemson*, 3 Railway Cases, 65: *Walker* v. *The London and Blackwall Railway Company*, 3 Q. B. 744; post, 193.

temporary possession of lands.

possession of lands which abut on the intended line of railway; but this power is confined within certain specified limits, and mansion-houses and other inclosed property are protected from such an invasion.

By 8 Vict. c. 20, s. 32, post, App., 167, it is enacted, that, subject to the provisions therein and in the special act contained, it shall be lawful for the company, at any time before the expiration of the period by the special act limited for the completion of the railway, without making any previous payment, tender, or deposit, to enter upon any lands within the prescribed limits, or, if no limits be prescribed, not being more than two hundred yards distant from the centre of the railway as delineated on the plans, and not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted, and not being nearer to the mansion-house of the owner of any such lands than the prescribed distance, or, if no distance be prescribed, then not nearer than five hundred yards therefrom (*e*), and to occupy the said lands so long as may be necessary for the construction or repair of that portion of the railway, or of the accommodation works connected therewith thereinafter mentioned, and to use the same for any of the following purposes; (that is to say),

For the purpose of taking earth or soil by side cuttings therefrom;

(*e*) In *Webb* v. *The Manchester and Leeds Railway Company*, 1 Railway Cases, 599, Lord *Cottenham* said, when called upon to construe a similar clause in a railway act, "The powers given to companies are so large, and frequently so injurious to the interests of individuals, that I think it is the duty of every Court to keep them most strictly within those powers; and, if there be any reasonable doubt as to the extent of their powers, they must go elsewhere and get enlarged powers, but they will get none from me by way of construction of the act."

and occupiers of such lands, of their intention to enter upon the same for such purposes; and, in case the said lands are required for any of the other purposes hereinbefore mentioned, the company shall (except in the cases aforesaid) give ten days' like notice thereof; and the company shall, in such notices respectively, state the substance of the provisions hereinafter contained respecting the right of such owner or occupier to require the company to purchase any such lands, or to receive compensation for the temporary occupation thereof, as the case may be (*f*).

(*f*) The annexed forms of notices, Nos. 9 and 10, may be used, with such variations as the particulars of the case may make necessary, care being especially taken to distinguish which period of notice ought to be given in each particular case.

No. 9.

——— Railway.

Form No. 9. Notice required to be given by the company three weeks before lands are entered upon for temporary occupation. (8 Vict. c. 20, ss. 32, 33, post, App., 167).

The —— Railway Company, incorporated by virtue of an act, intituled [*insert the title of the special act*], hereby give you and each and every of you notice, that, under the provisions of the said act, the temporary possession of certain pieces or parcels of land, called ——, situate in the parish of ——, in the county of ——, containing by estimation —— A., —— R., —— P., or thereabouts, which said pieces or parcels of land are more particularly delineated and described in the plan and schedule hereunto annexed [*as the case may be, as in the notice, Form No.* 2, *ante*, 153], is required by the said company, for the purpose of carrying into execution the purposes in the said act particularly mentioned; and further take notice*, that they the said company intend, at the expiration of three weeks from the service upon you of this notice, to occupy the said lands, so long as may be necessary for the construction [*or*, " repair "] of the said railway and the accommodation works connected therewith, and to use the same as they are authorised in that behalf by the said act or otherwise, and particularly for the purpose of taking earth or soil by side cuttings therefrom [*or*, " for the purpose of depositing soil thereon," *or*, " for the purpose of obtaining materials therefrom for the construction [*or*, ' repair '] of the said railway and accommodation works," *as the case may be*]. And, in pursuance of the directions contained in the said railway act, and a certain act incorporated therewith, intituled the Railways Clauses Consolidation Act, 1845, you and each and every of you are hereby informed that the said last-mentioned act contains the following enactments respecting the right of the owners and occupiers of lands, whereof temporary occupation is required

ide of the railway;

exercise of the powers aforesaid, it shall be lawful company to deposit, and also to manufacture and on such lands, materials of every kind used in con- the railway, and also to dig and take from out uch lands any clay, stone, gravel, sand, or other at may be found therein useful or proper for con- the railway or any such roads as aforesaid, and, urposes aforesaid, to erect thereon workshops, sheds, r buildings of a temporary nature: Provided always, hing in this act contained shall exempt the company action for nuisance or other injury, if any, done, in cise of the powers hereinbefore given, to the lands ations of any party other than the party whose lands so taken or used for any of the purposes aforesaid: d also, that no stone or slate quarry, brick-field, or ke place, which, at the time of the passing of the ct, shall be commonly worked or used for getting s therefrom, for the purpose of selling or disposing ame, shall be taken or used by the company, either r in part, for any of the purposes lastly hereinbe- ntioned.

by sect. 33, post, App., 168, in case any such lands required for spoil banks or for side cuttings, or for

has received the before-mentioned notice from the company, object to the company using the lands; and the objection

Consolidation Act, 1845, for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof.

Witness our hands, this —— day of ——, in the year of our Lord 18—.

A. B. } *Directors of the said railway company.*
C. D. }

[*Or*, " E. F., *Treasurer* [or, '*Secretary*'] *of the said railway company.*"]

To A. B., Esq., owner, and C. D., and E. F., occupiers of the lands within mentioned, and to all other persons whom it may concern.

No. 10.

———— Railway.

Form No. 10. Notice required to be given by the company, ten days before lands are temporarily occupied. (8 Vict. c. 20, ss. 32, 33, post, App., 168).

The —— Railway Company, incorporated &c., [*as in the foregoing notice, No.* 9, *to*; then proceed as follows:*] that they the said company intend, at the expiration of ten days from the service upon you of this notice, to occupy the said lands so long as may be necessary for the construction [*or*, " repair"] of the said railway and the accommodation works connected therewith, and to use the same as they are authorised in that behalf by the said act or otherwise, for the purpose of &c. [*here insert any special purpose requiring only ten days' notice: see sect.* 33, *ante*, 167]. And, in pursuance of the directions contained in the said act, and in a certain act incorporated therewith, intituled the Railways Clauses Consolidation Act, 1845, you and each and every of you are hereby informed that the said last-mentioned act contains the following provisions respecting the right of the owners and occupiers of lands, whereof temporary occupation is required during the construction of a railway, to demand and receive compensation in all cases where temporary possession of lands for the purposes aforesaid shall be taken by the company by virtue of the powers in the hereinbefore-mentioned act or act contained; that is to say,

By sect. 43 the company are required, within one month after their entry upon such lands, upon being required so to do, to pay to the occupier of such lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of their so taking possession of his lands; and shall also, from time to time during their occupation of the said lands, pay half-yearly to such occupier, or to the owner of the lands, as the case may require, a rent, to be fixed by two justices in case the parties differ; and shall also, within six months after they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time by the special act limited for the completion of the railway, pay to such owner and occupier, or deposit in the Bank for the benefit of all parties interested

be more fitting to be used (*h*). (*Id.*, s. 35, post, App., If the former objection be made, two justices may in into the truth of such ground of objection, and, for sp reasons to be assigned, may order that the lands shall be used by the company; and, after service of the just order on the company, they cannot take or use, without previous consent of the owner, any of the lands or mate which they are ordered not to take or use. (*Id.*, s. 86, App., 168). If the objection be, that other contiguous l which the company are authorised to use, would be l fitting to be used, then the owners and occupiers of contiguous lands, and the company, may be summon appear before two justices, and they may determine, marily, which of the lands shall be used; (*Id.*, s. 37, App., 169); or the justices may adjourn the inquiry summon any other person who may appear to have

if the notice is given by the occupier, "by A. B., esquire, the owner the in order to the beneficial enjoyment of other neighbouring lands belon me [*or*, "to him"]. And further take notice, that you are hereby r not to enter upon or use the said lands in any manner whatsoever, and is intended forthwith to apply for an order of justices to prevent the sai [*or*, "lands and materials"] from being at any time taken or used by

Witness my hand, this —— day of ——, in the year of our Lord 18

A. B., *owner* [or, "*occupier*"] *of the said la*

(*h*) The following may be the form:—

No. 12.

To the —— Railway Company.

Form No. 12. Notice from owner or occupier to the company, requiring them not to use lands for temporary purposes, on the ground that other contiguous lands are more fitting to be used. (Stat. 8 Vict. c. 20, s. 35, post, App., 168).

Whereas, by a certain notice &c., [*as in the foregoing notice, Form 1 to *, then proceed as follows:*—]; and that the ground of my said objec that certain lands called or known by the name of ——, situate at —— occupation of one —— [*as the case may be, describing the lands accur* being lands lying contiguous or near to those proposed by you to be tal the said purposes in the said notice mentioned, are more fitting to be u such purposes by you the said company. And further take notice, that hereby required not to enter upon or use the said lands referred to i said notice in any manner whatever, and that it is intended forthwith t the necessary steps to prevent the said lands [*or*, "lands and mate from being at any time taken or used by you.

Witness my hand, this —— day of ——, in the year of our Lord 18

A. B., *owner* [or, "*occupier*"] *of the said la*

estates and interests therein capable of being sold and conveyed by them respectively; and in such notice such owners

requires the company to purchase, and to assess the amount of compensation by arbitration, more than 50*l.* being claimed. (Stat. 8 Vict. c. 20, ss. 42, 44, post, App., 170).

scribe the lands with particularity, as in the notice, Form No. 2, ante, 153], for the purpose of making spoil banks and side cuttings thereon [*or*, "for the purpose of obtaining therefrom materials for the construction [*or*, 'repair'] of the said railway," *as the case may be*] and for other purposes connected with the construction of the said railway. And whereas, by the said act or acts of Parliament, authority is given to the owners or occupiers of lands so entered upon as aforesaid, or to parties having such estates or interests therein as, under the provisions in the said act or acts mentioned, would enable them to sell or convey lands, to serve notice in writing on the company, who shall have entered on such lands for the purposes aforesaid, requiring them to purchase such lands, or the estates and interests therein capable of being sold and conveyed*. Now, I the undersigned A. B., being the owner in fee simple of the above-mentioned lands, do hereby, in pursuance of the authority aforesaid, give you the said company notice, that I require you to purchase the said lands of me, and all my estate and interest therein, and that the amount of my claim for compensation or purchase money is £——. [*The following addition may be made to this notice, if it is considered desirable, (see note (x), ante,* 159):— And further take notice, that, unless you the said company are willing to pay to me the said sum of £——, then it is my desire that the amount of compensation to be paid to me by you for the purchase of the said lands shall be ascertained by arbitration, according to the provisions of the act or acts of Parliament in such case made and provided; and I hereby require you the said company to nominate and appoint an arbitrator to act on your behalf in the matter of the said arbitration.]

Witness my hand, this —— day of ——, in the year of our Lord 18—.

A. B.,
of [*insert address*].

No. 14.

To the —— Railway Company.

Form No. 14. A similar form, where a tenant in tail, &c., or other party empowered to convey lands taken for temporary purposes, requires the company to purchase, and to assess the amount of compensation *by arbitration*, more than 50*l.* being claimed. (Stat. 8 Vict. c. 20, ss. 42, 44, post, App., 170).

Whereas &c., [*as in the Form No.* 13, *to* *; *then proceed as follows*:—] Now, I the undersigned A. B., being the tenant in tail [*or*, "being committee duly appointed of A. B., Esq., a lunatic, the owner in fee simple," *as the case may be, setting forth the estate and interest of the parties in the lands; vide Form, No.* 4, *ante,* 157] of the above-mentioned lands, do hereby, in pursuance of the authority aforesaid, give you the said company notice, that I require you to purchase the said lands, and the estate and interest therein capable of being sold and conveyed by me, and that the amount of the claim for compensation by reason of the premises is £——; and that, on payment or deposit thereof, I am ready to make a conveyance of the said lands to you. [*A notice requiring an arbitration, as at the foot of Notice No.* 13, *ante, may be here added.*]

Sect. 44 (post, App., 171) enacts, that the amount of compensation in the

respect thereof; and the company shall thereupon be bo to purchase the said lands, or the estate and interest th capable of being sold and conveyed by the parties ser such notice. (8 Vict. c. 20, s. 42, post, App., 170).

The amount of compensation in all the above-menti cases is determined, and the money applied, in the m provided by the Lands Clauses Consolidation Act for termining the amount and application of the compens to be paid for lands taken under the provisions of that (*Id.*, s. 44, post, App., 171). This subject is treated o another part of this section (*k*).

Entry on lands to repair accidents, &c., by the authority of the Board of Trade.

After a railway is completed, the company may, in cer cases, enter on adjoining lands for the purposes of prev ing accidents and of repairing the railway; and in s cases, lands not included in the schedules annexed to special act may be taken under the compulsory power the act; but in all these cases a certificate from the Bo of Trade must be obtained by the company (*l*).

Powers to take temporary possession of roads.

III. The company are also authorised to make a temp rary use of certain private roads. By 8 Vict. c. 20, s. 3 (post, App., 166), it is enacted, that, subject to the pr visions therein, and in the special act contained, it shall lawful for the company, at any time before the expirati

pany, requiring that compensation shall be assessed by a special jury. (8 Vict. c. 18, s. 54, post, App., 128).

summoned for the purpose of assessing and determining the sum of money be paid by you for the purchase in fee simple in possession [*as the case m be*] of the pieces or parcels of land belonging to me, described or referred in the said notice, do hereby give you notice that it is my desire, which I hereby signify to you, that such question of compensation as aforesaid sh be tried before a special jury in the manner mentioned in, and for such c provided by, the Lands Clauses Consolidation Act, 1845.

Witness my hand, this —— day of ——, A. D. 18—.

A. B.,
of [*here insert addres*

(*k*) See post, 294.

(*l*) See ante, 92.

Occupation of Roads.

of their intention to the owners and occupiers of the road, and of the lands over which the same shall pass, and must in such notice state the time during which, and the purposes for which, they intend to occupy such road; and such compensation must be paid as may be agreed upon, or, in default of agreement, then the amount is to be settled by two justices in the same manner as compensation not exceeding £50.

But the owners and occupiers of any such road, and of the lands over which the same passes, may, within ten days after the service of the aforesaid notice, by notice in writing to the company (*n*), object to the company making use of the road, on the ground that other roads, such as the company are hereinbefore authorised to use for the purposes before mentioned, or that some public road, would

(*n*) The following may be the form of this notice:—

No. 18.

To the —— Railway Company.

Form No. 18. Notice from the owner, &c., of a private road, to the company, requiring them not to use the road, on the ground that an adjoining road, would be more fitting to be used. (See 8 Vict. c. 20, s. 31, post, App. 167).

Whereas, by a certain notice under the hand of A. B. and C. D., [*as the case may be*], bearing date the —— day of —— last, I am informed that you intend to enter upon, occupy, and use a certain private road belonging to me, in my occupation, and situate on lands belonging to me, situate at &c.; take notice, that I the undersigned E. F., being the owner and occupier of such road, and being the owner of the lands over which the said road passes, do hereby, in pursuance of the statute in that case made and provided, object to your making use of such road, or of any part thereof; and the ground of my said objection is, that there is another private road, [*or*, "there is a public road"], situate in the parish of ——, and called —— lane, [*particularly describing the road*], which you the said company are authorised to use for the purposes in your said notice mentioned, and which said road is more fitting to be used for the said purposes, than the road mentioned in your said notice. And further take notice, that youare hereby required not to enter upon or use the said road, referred to in your said notice, in any manner whatsoever, and that it is intended forthwith to apply for an order of justices, to prevent the said first-mentioned road from being taken or used by you.

Witness my hand, this —— day of ——, in the year of our Lord ——.

E. F.

of [*place of abode*].

equired to be given (*o*), and in the same manner
he provisions relative to such proceedings, the
d" or "roads," or the words "road and the land
the same passes," as the case may require, had
ituted in such provisions for the word "lands."
post, App. 167).

mpany cross, raise, cut through, sink, or use any
road, public or private, so as to render it im-
, or dangerous, or extraordinarily inconvenient, to
or other persons, or carriages, they are required,
commencement of any operations, to cause a
oad to be made, instead of the road to be inter-
, and to maintain such road, (*Id.*, s. 53, post, App.
, in default of making the substituted road, the
are liable to a heavy penalty, (*Id.*, s. 54, post,
); and any person sustaining special damage may
n action on the case. (*Id.*, s. 55, post, App. 174).

Restoration of roads.

ad interfered with as above mentioned, can be
ompatibly with the formation and use of the rail-
company are required to restore it; if it cannot
d, then the company are required to cause some
cient substituted road, to be put into a perman-
tantial condition: and the former road must be

Occupation of Roads.

by them, and, in case of difference, two justices may d the question in the manner prescribed. (*Id.*, s. 58, App. 174).

Compensation.

By what parties compensation may be claimed.

4. Having thus pointed out the powers of the compa 1st, to take and purchase lands; 2nd, to take temp possession of lands; and 3rd, to take temporary pos of roads,—we proceed to consider what compensation i under the statutes (*p*) to parties who are interested i property so taken, or who are otherwise injuriously af by the construction of the railway.

And first, by 8 Vict. c. 20, s. 6 (*q*), it is enacted, tha exercising the power given to the company by the speci to construct the railway, and to take lands for that pu the company shall be subject to the provisions and re tions contained in that act, and the Lands Clauses Co dation Act; and the company shall make to the owne occupiers of, and all other parties interested in any taken or used for the purposes of the railway, *or injur affected* by the construction thereof, full compensatio the value of the lands so taken or used, and for all da sustained by such owners, occupiers, and other parti reason of the exercise, as regards such lands, of the p by that or the special act, or any act incorporated ther vested in the company." And in a subsequent cla the same statute, which authorises the company to e every description of works necessary for making, ma pairing, and using the railway (*r*), it is enacted, tha the exercise of the powers, by that or the special act ed, the company shall do as little damage as can b

(*p*) As to the mode of assessing the amount of the compensation to be paid, see post, 285.

(*q*) Post, App. 159.

(*r*) Ante, 145.

ce full satisfaction in manner therein, and in the :t, and any act incorporated therewith, provided, *ties interested*, for all damage by them sustained by f the exercise of such powers. (*Id.*, s. 16, post, 3). Compensation.

n all cases where lands are taken, it is laid down as l rule, that, in estimating the purchase-money or ıtion, in any of the cases aforesaid, regard shall be the justices, arbitrators, or surveyors (*s*), as the be, not only to the value of the land to be taken, to the damage, if any, to be sustained by the the lands, by reason of the severing of the lands om the other lands of the owner, or otherwise in- affecting such other lands. (8 Vict. c. 18, s. 63, p. 130). General rule for assessing compensation.

f, after the company have taken possession of lands, y shall appear to be entitled to an interest therein, ugh inadvertence, no compensation has been paid to company may, within a time limited, pay compens- the lands, and also for the loss of the mesne profits the amount of compensation to be agreed upon or in like manner as if the company had purchased rest before entry upon the land; (*Id.*, s. 124, post, 8); and the compensation and mesne profits must ed according to the value of the lands at the time e entered upon. (*Id.*, s. 125, post, App. 149). Compensation for lands omitted to be purchased by mistake.

respect to the compensation which may be claimed, ges sustained by reason of the temporary occupation , under the powers conferred on the company, the Compensation for damages sustained by the temporary occupation of lands.

provision does not refer here compensation is as- jury: the same rule seems, o be applicable. In prac- tice it is usual to observe it. See the evidence taken before the House of Lords on this subject, post, 260.

Compensation.

statute already referred to provides (*t*), that, in all cases where the company shall take temporary possession of lands, by virtue of the powers therein or in the special act granted, it shall be incumbent on the company, within one month after their entry upon such lands, upon being required so to do, to pay to the occupier of the lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of their so taking possession of his lands; and shall also, from time to time, during their occupation of the said lands, pay half-yearly, to such occupier, or to the owner of the lands, as the case may require, a rent to be fixed by two justices, in case the parties differ; and shall also, within six months after they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time by the special act limited for the completion of the railway, pay to such owner and occupier, or deposit in the Bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage, or injury, that may have been sustained by them by reason of the exercise, as regards the said lands, of the powers therein or in the special act granted, including the full value of all clay, stone, gravel, sand, and other things taken from such lands. (*Id.*, s. 43, post, App. 170). And here it must be remembered, that, if the lands have been temporarily occupied by the company, for the purpose of making spoil banks or side cuttings thereon, or for obtaining therefrom materials for the construction or repair of the railway, then the parties interested in such lands may waive their right to claim compensation under the above provision,

(*t*) 8 Vict. c. 20, s. 32, ante, 167.

otice of their intention (*y*), and pay to the owners upiers of the roads, and of the lands through which ne shall pass, such sum for the use and occupation road, either in a gross sum or by half-yearly instal- s shall be agreed upon between the owners and s respectively and the company, or, in case they shall be settled by two justices, according to the ns of the Lands Clauses Consolidation Act (*z*). (*Id.*, st, App. 166).

Compensation to lessees for years, &c.

are also special provisions in the 8 Vict. c. 18, with to the compensation to be paid to lessees for years, tenants from year to year. Thus, if any lands are d in a lease for a term of years, and a part only lands are required for the purposes of the railway, re rent to be paid by the tenant for the lands re not required, is to be apportioned in the manner ed. (8 Vict. c. 18, s. 119, post, App. 147). And ch lessee is entitled to receive compensation for age done to him in his tenancy, by reason of the e of the lands required from those not required, or se by reason of the execution of the works. (*Id.*, post, App. 148).

r lands are in the possession of any person having

Compensation.

from year to year (*a*), and if such person be required to give up possession of any lands so occupied by him (*b*) before

(*a*) See cases of compensation to such tenants, post, 224.

(*b*) The following may be the form of the notice:—

Form No. 19. Notice from the company to the occupier of lands, stating that the lands are required for the railway, and that the company are willing to treat. (See 8 Vict. c. 18, ss. 18, 21, post, App. 122; Id., ss. 120, 121, 122, post, App. 148).

You are hereby required to take notice, that, by an act of Parliament, intituled the —— Railway Act, 1845, [*insert the title of special act*], the —— Railway Company, thereby incorporated, are authorised and empowered to purchase or take, for the purposes of the said railway undertaking, ALL THOSE parcels of land, tenements, and hereditaments mentioned in the schedule hereunto annexed, and particularly described in a map or plan hereunto also annexed, [*as the case may be*], in the possession of you A. B. as the tenant thereof, or in which you claim some term or interest.

Now we the said —— company do hereby give you notice that the said lands, tenements, and hereditaments, are required by us for the purposes aforesaid, and that we intend to take the same, and that we are willing to treat for the amount to be paid for the value (if any) of your unexpired term or interest in the said lands, tenements, and hereditaments, and for any just allowance which ought to be made to you by an incoming tenant, and for any loss or injury you may sustain by reason of the construction of the said railway or other works of the said company, or the determination of such tenancy, and for any damage which may be done to you by the severance of the lands held by you from those not required by us the said company, or by the same being otherwise injuriously affected by the said railway works, or by the exercise of the powers by the said act vested in the said company.

And further take notice, that you are hereby required to state to the said company, at their office at ——, [*as the case may be*], the particulars of your term, interest, or estate in the said lands, tenements, and hereditaments, so required by the said company, and the particulars of the claim for compensation made by you in respect thereof; and if, for twenty-one days after the service of this notice, you shall fail to state the particulars of your tenancy and claim for compensation, or to treat with the said company in respect thereof, or if you shall neglect or refuse to agree, or shall not agree with the said company as to the amount of the said compensation, we the said company will proceed to procure the amount of such compensation, to be settled in the manner provided by the said act for settling cases of disputed compensation.

And further take notice, that if you claim to have a greater interest in the said lands, tenements, and hereditaments, than a tenancy at will, and claim compensation in respect of any unexpired term or interest therein, under any lease or grant thereof, we the said company do hereby require you to produce to the said company, at some convenient place to be notified by you to the said company, such lease or grant, or such best evidence thereof, as may be in your power; and if, for the space of twenty-one days after the service of this notice

the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain; or, if a part only of such

Compensation.

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upon you, you fail to produce such lease or grant, or such best evidence thereof, you will be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

And further take notice, that you are hereby required (without prejudice to any powers enabling the company to take possession at any other time) to quit and deliver up possession of the said lands, tenements, and hereditaments, or such parts thereof as are in your tenure or occupation, to the said company, or to the person appointed by them to take possession thereof, on the —— day of —— next (*s*).

Dated the —— day of ——, 18—.

C. D. } *Directors of the said*
E. F. } *railway company.*

[or, "F. G., *Secretary*," or, "*Treasurer*" *of the company*].

To A. B. ——, &c., and to such other person or persons as may be in the possession of the said lands, tenements, and hereditaments, or any part thereof; and all and every other the tenants or occupiers thereof, and all other persons whom this notice may concern.

The SCHEDULE *referred to in the foregoing notice.*

All those parcels of land as now staked and set out for the purposes of the said railway, together with all houses, buildings, trees, fences, ways, rights, and appurtenances thereto belonging, situate in the parish of ——, in the county of ——, and containing by admeasurement —— A., —— R., —— P., or thereabouts, more or less, and more particularly delineated and described in the plan thereof, hereunto annexed, and coloured ——, being part of the several parcels of land and hereditaments, within the said parish, comprised in the plan of the said railway, deposited with the clerk of the peace for the said county of ——, and referred to in the said act of Parliament, and distinguished, in

(*s*) This clause may be inserted if the company are entitled to enter upon the lands. See Viet. c. 18, ss. 84, 85, post, App. 136, 137.

Compensation.

lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and, upon payment or tender of the amount of such compensation, all such persons shall respectively deliver up any such lands in their possession, required for the purposes of the special act. (*Id.*, s. 121, post, App. 148).

If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest, under any lease or grant of any such lands, the company may require the party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the company, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation is to be considered as a tenant holding only from year to year, and is entitled to compensation accordingly. (*Id.*, s. 122, post, App. 148).

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the said plan and book of reference deposited therewith, by the number and description hereunder mentioned:—

Parish of ———, *County of* ———.

No. on Plan.	Description of the Property.	Owner, or Reputed Owner.	Lessee, or Reputed Lessee.	Occupier.

ial provisions are also made with respect to the com- Compensation.
on which is to be paid when loss or damage is sus- Compensation in respect of damage done to mines.
by owners or lessees of mines under or near the
r.

t has already been stated, the company are not entitled
es or minerals under lands purchased by them, except
art as shall be necessary to be used in the construction
works, unless the same shall have been expressly pur-
; and such mines are deemed to be excepted out of
veyance. (*Id.*, s. 77, post, App. 180). If the owner
es under the railway, or within the prescribed distance
om, be desirous of working the same, he must give no-
the company, and the company may then make com-
ion for the mines, (the amount to be settled as in other
f disputed compensation); and in that case the mines
be worked. (*Id.*, s. 78, post, App. 180). If the com-
lo not treat, after receiving the notice, the owner may
he mines in the manner particularly prescribed; and
mage or obstruction to the railway or works by im-
working of such mines (*c*), must be made good by the

here a canal company sought
er damages from the owners
mine, the question turned on
truction of the Canal Act,
court were of opinion, that
ing of the act of Parliament
ing coal owners to give no-
the company of their inten-
ork their mines within a cer-
ance of the canal, and the
iven to the company to in-
s works, and to prohibit the
upon making compensation
, from working within that
was for the purpose of
the company to purchase
out the rights of the coal owners, if
they thought their canal works likely
to be endangered by the nearer ap-
proach of the miners; but, if the com-
pany declined the purchase, as they
had done in this case, the coal owners
were left to their common-law rights,
as if no canal had been made, and
they might take every part of their
coal, in the same manner as they might
have done before the act passed; their
former rights in that respect not hav-
ing been taken away by the act,
which had only appropriated the sur-
face of the land, and so much of the
soil as was necessary for the cutting

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party who works the mines. (*Id.*, s. 79, post, App. 18
ways, headways, gateways, or water levels, may be
the owners of mines, in the manner prescribed, (*I*
post, App. 181); and the owners of the land throug
they are made are entitled to receive compensation
company. (*Id.*, s. 82, post, App. 181).

The company are required, from time to time, to p
owner, lessee, or occupier (*d*) of any mines, extendin
lie on both sides of the railway, all such additional
and losses (*e*) as shall be incurred by such owner,
occupier, by reason of the severance of the lands l
such mines by the railway, or of the continuous w
such mines being interrupted as aforesaid, or by
the same being worked in such manner, and under
strictions, as not to prejudice or injure the railway
any minerals not purchased by the company, whic
be obtained by reason of making and maintaining
way; and if any dispute or question arises bet
company and such owner, lessee, or occupier, touc

and making of the canal, leaving the coal, &c. to the owners, *to be enjoyed* in the same manner as before; and the Legislature had only given the land owners a compensation for so much of the soil as they had deprived them of. And the Court said, this was not like the case, where damages were recovered against the late Earl of Lonsdale, for undermining a person's house; for there the party claimed under a grant from the owner of the land, and the injury done was against the landowner's own grant. *Wyrley Canal Company* v. *Bradley*, 7 East, 372.

(*d*) A lessee of a coal mine was held to be entitled to compens loss of the profit which he made on the coal, if he h restrained by a canal act fr the colliery. *Barnsley pany* v. *Twibell*, 13 L (Ch.), post, 219.

(*e*) As to what descrip penses and losses may be re *Dand* v. *Kingscote*, 2 Rai 46. See, also, under wl stances the lessee of a held not to be entitled to pensation for damages s him, *R.* v. *The Leeds Railway Company*, 3 A. post, 239.

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f such losses or expenses, the same is to be settled ation. (*Id.*, s. 81, post, App. 181).

ompany are authorised, after notice, to enter mines, use all necessary means to discover the distance e railway to the mines, (*Id.*, s. 83, post, App. 181); they are refused admission to the mines, a penalty is ed by such refusal. (*Id.*, s. 84, post, App. 181). If are worked contrary to the aforesaid provisions, the any may require the owner to construct such works, dopt such means, as may make the railway safe; and, se of refusal, the company may themselves construct h works, and recover back the expenses thereof. (*Id.*, 5, post, App. 182).

Compensation for injuries to water and gas-pipes.

The company are empowered to remove or displace water d gas-pipes; but they must make good all damage done the property of the water or gas company by the disrbance thereof, and make full compensation to all parties r any loss or damage which they may sustain, by reason f any interference with the mains, pipes, or works of such ater or gas company, or with the private service-pipes of ny person supplied by them with water. (8 Vict. c. 20, 21, post, App. 164).

Questions of nicety may arise, under the Consolidation Acts, as to compensation.

It may be observed, with reference to the provisions contained in the Consolidation Acts, on the subject of payment of compensation, that questions of considerable nicety will probably arise as to their construction. It seems to have been the intention of the Legislature, to give compensation to all parties interested in lands taken or injuriously affected by the construction of the railway. But it is obvious that the language used in the statutes must be applied with some limitations; for it cannot be contended that railway companies are liable to make compensation for every injury, which parties interested in lands may sustain in conse-

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quence of the construction of the railway, however remote such injury may be (*f*). At the same time, it seems difficult to lay down any general rule upon the subject, and it will, therefore, probably be the most useful course to state the cases which have already been decided upon statutes containing compensation clauses of a similar nature. In applying these cases, it must be remembered, that each case was determined upon the construction of the provisions contained in the particular act; but, as the clauses on which the decision turned are stated at length in the report of each case, it may be seen to what extent the judgment of the Court is applicable to the elucidation of the compensation clauses in the Consolidation Acts.

Arrangement of compensation cases.

The cases are arranged in the following order:—

1. *Compensation, where lands, &c. have been actually taken, or directly injured.*

2. *Compensation, where lands, &c. have been indirectly injured.*

3. *Compensation to lessees of lands.*

4. *Compensation in other cases.*

The Report made by a Select Committee of the House of Lords, in the session of 1845, on the present mode of assessing compensation, is also annexed (*g*); together with such extracts from the evidence taken before that committee, as appear to point out the principles now adopted by surveyors, in ascertaining the amount of compensation for injuries done to lands.

(*f*) See Lord Denman's observations in *Reg.* v. *The Eastern Counties Railway Company*, 2 Q. B. 347, post, 213.

(*g*) Post, 260.

The London and Greenwich Railway Co., (3 *Q. B.* 166; 3 *Gale*, 138).]—Mandamus to the defendants to assess compen- Slee & Co., for damages sustained by reason of the railway en constructed within fifty feet of certain premises belong- m. The affidavits stated that Messrs. Slee were lessees and of a piece of ground situate in Bermondsey, together with ing-houses, (one principal and five small ones), and a and buildings on the same, used as a vinegar manufactory. ipal dwelling-house was occupied by N. Slee, the other houses by tenants. A surveyor deposed that the said prin- lling-house, and the garden, were situate within fifty feet of y. The affidavits also contained some statements, shewing approach of the railway had made the occupation of the house and garden inconvenient, and lessened their value. remises were comprehended in the schedule of stat. 3 & 4 lvi, and the lessees, when the act passed, were among those sect. 46. Messrs. Slee gave notice to the company to pur- r interest in the said piece of ground, buildings, and pre- to treat for compensation to be made for loss in respect of ents, tenant's fixtures, machinery, and otherwise. The offered, without prejudice, to treat for the said principal house, and the whole of the yard and garden at the rear of , and for the compensation, &c. to be made for improve- tures, machinery, or otherwise; but they declined to treat for d, except as aforesaid, or for any of the dwelling-houses,

A railway act contained a clause, that, if the owner of any house, manufactory, ground, or building, which should be situate within fifty feet of the railway, should give notice to the company to purchase his interest in such houses, &c., the company should treat for the purchase of his interest in the houses, &c. mentioned in such notice:—*Held*, that the owner of a principal dwelling-house and garden, within fifty feet of the railway, who was also the owner of a vinegar manufactory, brewery, and five smaller dwelling-houses immediately adjoining the same, but more than fifty feet from the railway, could not require the company to purchase any other portion of the premises, beyond the principal dwelling-house and garden.

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riorated in value by the railway being constructed so near it. He applied to the company to purchase the whole of the premises, making compensation for goodwill, &c., which application was not noticed. He then gave them notice to issue their warrant to summon a jury, to determine whether he was entitled to compensation. This notice being disregarded, Walker served the sheriff with a precept, as he was authorised to do by the act, requiring him to summon a jury to assess the compensation. Walker's affidavit then stated that a jury was accordingly impannelled; and that, after the complainant's counsel had opened his case, a surveyor was called, and stated "that the entirety of the said dwelling-house was not situated within fifty feet of the railway; but that a small portion of the dwelling-house, abutting upon the high road, was beyond fifty feet; but that such portion beyond and out of the said fifty feet did not exceed thirteen feet; that the said dwelling-house could not be divided, and that a perpendicular line, drawn at right angles to the high road, would leave only the front of the dwelling-house beyond the said fifty feet, and the remaining chief part of the dwelling-house within fifty feet of the railway." The counsel for the company then objected to the reception of any evidence to shew the value of the premises or their deterioration, contending, that, because the entirety was not within fifty feet, the Court had no jurisdiction to assess the value, or to proceed with the inquiry; and the under-sheriff refused to hear any evidence and to allow the inquiry to proceed, and told the jury that the claimant was not entitled, under the act, to have the premises purchased. The surveyor also made affidavit, that, if the company purchased only that portion of the house which was within the fifty feet, the remainder would be of no use to the complainant. The affidavits in opposition to the rule stated that the portion of the complainant's house nearest to the railway was eighteen feet from it; that the part occupied as the bar and chief place of business was more than fifty feet from the railway; and that the public-house was not deteriorated in value by the construction of the railway, unless any injury had arisen from the removal of houses, and consequent loss of custom. They stated also, that, after argument on the objection, the under-sheriff directed the jury to find "that the claimant is not entitled to have his property purchased, a portion thereof not being within fifty feet of the railway."—Cur. adv. vult.

Lord *Denman*, C. J., now delivered judgment, and, after referring to sects. 50 and 51 of the statute, and to the facts stated in the affida-

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s to the proceedings at the inquisition, his Lordship said—We w to consider whether the objection taken before the under- was well founded. We are of opinion, that any house, of which large proportion is within fifty feet, ought to be called a house fifty feet. This would be so held by a jury, if called to pro- a verdict on such an issue. In the absence of any appropriate ction for deciding it, there is strong reason for holding the my to the rule of construing the words of parties most against elves. The proceedings of the company may, according to the sion of their own act, be so injurious to houses so described, as for the remedy which it provides; and, though the description perfect, there are pretty clear indications of the intention of egislature. The compensation must be attained through the m of a verdict, and must be ascertained and settled as in pur- s; and we have just seen that no owner of a house purchased is to part with a portion of it only. If they will take any part house, they are compellable to purchase the whole of it. If, they come within fifty feet of a house, and thereby deteriorate house in value, the compensation must be settled in the same er, that is, for the whole house, at the owner's option. The ny have also an option. They are in no case compellable to se any portion of a house, which portion is more than fifty feet the railway; and, whenever called to take a part, they may the whole, if they prefer it, subject to compensation. From words an argument is deduced, that the company, though free e the whole, is not compellable to do so. But we do not think ference just. The proviso seems, indeed, to be framed on the ous supposition that the act had given power to the owner to el the purchase of a part of a house, and had then cut down power, giving the company the option; but from such a mis- we cannot reasonably infer that the company were intended to e to buy the whole or a part as they thought proper, when it is that a purchase of a part might be ruinous to the whole, and , in the analogous case of taking and purchasing, the option of g with the whole is given to the owner, if a part only should be red by the company. Mandamus awarded.

. v. North Midland Railway Co., (*2 Railway Cases*, 1).]—Manda- requiring the defendants to assess compensation to Messrs. Grat-

A mandamus was issued to compel a company to assess compensation, where it appeared

It appeared by the affidavits that the complainants were

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that the colliery of the applicants was inundated with water, in consequence of the company having diverted the course of a brook.

If damage be done, partly under the powers of an act, and partly not, the proper remedy is by mandamus, and not by action (*e*).

the owners of certain collieries, and that, in 1830, they h an adit or sough, from a stream called Smith's Brook, for pose of watering and laying dry the coal, and that the wate up from the mine had been accustomed to run off along the Smith's Brook; that the complainants had worked the colli 1830 to October, 1838, when they were prevented from ge more coals, in consequence of the coal-works being filled wi that the defendants, in proceeding to carry the powers of (6 & 7 W. 4, c. cvii) into execution, had altered and div course of Smith's Brook into a new course, upon much high and had thereby caused the water to flow up the said soug and also to flow into the outcrop of the said coal, and fr into the said coal-works, in such large quantities as to ren possible to work the same. Messrs. Gratton accordingly gav the company of this injury, and demanded compensation, refused. The affidavits in answer stated that the collier several years been liable to occasional stoppages, from wat into the works; and that when the new course of the brool set out, upon the suggestion of Gratton, instructions were make the bottom of the new course of the same depth as t the colliery, so as to permit the same to drain freely into t and that after the new course was completed, the water colliery has been constantly seen draining into it through and that afterwards there was a heavy flood, which washed of earth down the new course, and partially obstructed the the adit; and that such soil still remains, it not being necessary to clear the same away, as the colliery had ce worked for a period of three months before that time. It that the company had, by any work done by them, caused to flow from such stream into the adit in larger quantities t always done. Sect. 12 of the statute empowered the compa the course of any rivers, &c., as may be necessary for co tunnels, bridges, or passages over or under the same, and t alter the course of any rivers or streams of water, or to ra any such rivers or streams, in order the more conveniently the same over or under or by the side of the railway, an drains or conduits into, through, or under any lands adj railway, for the purpose of conveying water from or to th the said company doing as little damage as may be in the

(*e*) See also *Lyster* v. *Lobley*, 7 A. & E. 124, post, 23

id several powers, and making full satisfaction to all persons
d, in any lands taken or injured, for all damages to be by
tained; and that the act should be sufficient to indemnify
any and all other persons for what they should do by virtue
owers thereby granted.—Lord *Denman*, C. J. We do not
that there is damage done; that is a question for the jury:
gh to induce us to issue a mandamus, that the claimants say,
ising of the level of the brook, that being part of the word
ng," they have suffered.—*Littledale*, J. They cannot re-
action for the lawful acts; they must have a mandamus for
part of the injury has been done under the powers of a sta-
y cannot have their remedy for it by action at law. Rule

. *The North Union Railway Co.*, (1 *Railway Cases*, 729; 8 *Dow.* 9).]—Mandamus to the defendants, requiring them to grant ation to Ryland and others, for damages sustained by the exe- the stat. 4 Will. 4, c. xxv, and for the further temporary tual, or for any returning damages which the said applicant ain. The applicants were the owners and occupiers of a fac- chemical dye-works, adjoining the North Union Railway. ed, that, after the company had commenced making the rail- the applicant's premises, complaint was made to the com- at clay and sand, mixed with water, flowed from the railway premises, the railway having been raised higher than the lands; and notice was given to the company, that, unless med a bank, or used other means to prevent the water from into the works, great injury would result; that this evil e remedied by making a sufficient sluice on the side of the by which the overflow of water might be carried away; re was a dye-house at the said works, in which a great num- ats were filled with indigo; also, that there were bleach- nd chemical works, all of which places were lower than the ; that, on the 6th of July, 1838, a great quantity of rain- me down the railway, from the higher part of the road, and rough the applicant's premises, and the effects and property were totally spoiled or much damaged; that the company had heir drains into two ancient drains in the bleach-croft, which tended only for agricultural purposes, and so overcharged hat they broke up through the surface of the land. The

So, where compensation was sought, on the ground that the applicant's premises were inundated with water, and that the injury was caused by the want of sufficient drainage on the line of a railway, but the railway company alleged, that the drainage had been made by agreement with the applicant, and that the overflow of water was caused by works erected on his own premises: the Court ordered a return to be made to the mandamus, that the alleged defence might be investigated.

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affidavits of the company in answer stated that much care had been used in constructing the railway, with a view to the drainage and protection of adjoining lands, and preventing, as far as practicable, the detention of water, or the diverting of it from its ancient and legitimate channels; that the water was made to empty itself into the channels, by arrangement and agreement with Messrs. Ryland, and that the overflow of water was caused by works which they had subsequently erected; that the rain which took place on the said 6th July was much greater, in suddenness of rise and extent, than any in the experience of the deponents.—Lord *Denman*, C. J. We think there is enough doubt to require a return as to the facts. It is not denied that acts injurious to the parties have been done, but they are said to have been done with their consent. This must be investigated. The other judges concurred. Rule absolute.

The Hungerford Market Company pulled down a house which they purchased; and in doing so, it was ascertained that the party-wall of the adjoining house was of an insufficient thickness, whereupon the company took proceedings under the Metropolitan Building Act, and the wall was rebuilt:—*Held*, that the occupier of the adjoining house was not entitled to receive compensation for damages sustained by the rebuilding of the wall.

Rex v. *The Hungerford Market Co.*, (1 *A. & E.* 668)].—Mandamus requiring the defendants to assess compensation to Mary Yeates, for damage sustained by her in respect of No. 23, in the Strand, of which premises she was tenant for years, carrying on a business there. It appeared that the defendants had purchased the adjoining house, No. 22, Strand, and that, in August, 1832, they gave notice to Mrs. Yeates, under the Building Act, (14 Geo. 3, c. 78, s. 38), that the party-wall between the two houses must be repaired; and they stated their intention to have the wall surveyed, pursuant to the last-mentioned act, and required her to appoint surveyors to meet those of the company, on the 17th of November. Mrs. Yeates referred the application to her landlord, who appointed surveyors to meet those named by the company. On the 2nd of November, she was served, on behalf of the company, with a certificate of the surveyors, that the wall was of insufficient thickness, and ought to be rebuilt. Before the serving of such certificate (as she stated) the company began to take down No. 22; and, on the 14th of November, they proceeded to pull down the party-wall and build another. No. 22 was entirely taken down and rebuilt. By these operations Mrs. Yeates sustained the damage for which compensation was now sought; the principal items being,—expense occasioned in removing from the premises, loss of stock, loss of trade, damage to her household goods, and injury to her business. The company, in opposition to the rule, stated that the length of time given to Mrs. Yeates by the notice, for appointing surveyors, had been dispensed with by her son; that they

;ed by or in the taking down of any of the messuages to
down for the purposes of this act, the said company shall
he owners and occupiers of such messuages, so damaged or
ompensation and satisfaction for such damage or injury," &c.
Lemman, C. J. I think we have no power to grant this man-
The intention of the 66th section was merely to preserve
y among the buildings to be erected, and not to do away
necessity that a good party-wall should be maintained be-
e of those houses and a neighbouring house, not within the
s of the act. The company, then, have only exercised an
right: finding that a house, adjoining one which they had
d, had an insufficient party-wall, they, as any purchaser
ve done, enforced the provisions of the Building Act on that
whether regularly or otherwise, we are not now called upon
nine. It is true that the pulling down of the house was an
in pursuance of the statute; so was every act, even to the
, done by the company in the course of these works; but it
going very far, to say that on that account the 68th section
o every thing that was so done. The only question here is,
the particular act from which the damage immediately pro-
s in pursuance of the statute. I think it was not, but that
any merely exercised the right which belonged to any pur-
The other judges concurred. Rule refused.

The Hungerford Market Co., (1 *A. & E.* 676; 3 *N. & M.* 622).] So, where the same company purchased No. 11, Villiers-street, and pulled it down, and thereby caused damage and inconvenience
mus requiring the defendants to assess compensation to E.
r injury sustained by her in respect of No. 12, Villiers-
t appeared that she was the occupier of the above-men-

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ment made with the owner; and neither No. 11 nor No. 12, being mentioned in the schedule annexed to the company's act.

straight line with Duke-street into the Market, took down No. 10 and No. 11, and the house of Mrs. Eyre (No. 12) was injured, either from the partition between the houses being damaged, or from the main body of Mrs. Eyre's house giving way, in consequence of the removal of No. 11. Sections 66 and 68 of the statutes (*f*) were, amongst others, referred to in support of the application.

Lord *Denman*, C. J.—It appears that there is a general power given to the company, by sect. 1, to purchase land. It is also directed, that a passage should be made under the houses in a specified line, and for that purpose they are empowered to take No. 10. They subsequently bought No. 11, and have pulled down and rebuilt it, as well as No. 10; and it is for the damage done to No. 12, in pulling down and rebuilding No. 11, that Mrs. Eyre seeks to recover. The section relied on is the 68th, which enacts, that persons shall be entitled to compensation who are "damaged or injured by or in the taking down of any of the messuages or buildings to be taken down for the purposes of, or otherwise in the execution of this act." It is not clearly made out whether the damage was done "by or in the taking down" of No. 11, or by taking down the party-wall between No. 11 and No. 12. If it was done by taking down the party-wall, then the case of *Rex* v. *The Hungerford Market Co.* (1 *A.* & *E.* 668; *ante*, 199) shews that the mandamus ought not to issue. But, assuming that the damage was done "by or in the taking down" of No. 11, then the question arises, whether that taking down was "for the purposes of, or otherwise in the execution of the act." Now, the company had no power to take No. 11 against the will of the owner; but they bought the house by agreement with him. No doubt can be entertained, that, if any other person had so bought No. 11, such purchaser might have pulled it down without any authority from Parliament, and would not have been liable to make compensation for any damage, not arising from negligence, unless, indeed, the party-wall had been taken down, and then the Building Act would apply: but the assumption now is, that the damage did not arise from taking down the party-wall. Why, then, should the company be obliged to make compensation, if any other purchaser would not? Only because the Legislature, having given the company certain compulsory powers, has thought it right to throw a larger protection

(*f*) See these sections, *Rex* v. *Hungerford Market Co.*, 1 A. & E. 668; ante, 199.

sons who may suffer by the exercise of those compulsory , therefore, the compulsory power had extended to No ho were damaged by the taking down of No. 11 would be act, as well the owners and occupiers of No. 11 as of the roperty; for they could not, by any contract amongst prevent the doing of such damage. But, in this case, company had no monopoly as to the purchase of No. 11, and occupiers of the adjoining house, No. 12, stood in no protection of the act, nor can they enforce any of its pro- he 68th section must be construed with reference to the powers, and it applies to no case in which those powers rcised. In some sense, all the acts of the company may be done "for the purposes of or in the execution of the f the act had not been passed, the company would not d; but this section relates only to the taking down of the purposes of, and in execution of the act; and those such alone as they have a compulsory power to take. udges concurred. Rule discharged.

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e Nottingham Old Waterworks Co., (6 *A. & E.* 355; 5 *Nev.* —Mandamus to the defendants requiring them to summon ess compensation to Sarah Turner. By the statute incor- e company, 7 & 8 Geo. 4, c. lxxxii, the company were em- make and continue water-works, weirs, and other like works h of L., and to enter upon all rivers, lands, &c., specified in nd books of reference, and to do all other things necessary and completing the water-works. A plan describing the works, and the lands through which they were to be car- ooks specifying the owners of the lands, were to remain erk of the peace. The company were also empowered to the purchase of lands, &c.; and tenants for life, &c., s of lands through which the works were to pass, were satisfaction for the value of the lands, and the damages n making the works; the amount to be settled by a jury, he affidavits it appeared that Sarah Turner was tenant for ter-mill in L., on the river Leen. In 1826 the company session of works for raising water from the Leen. The assed in 1827. In 1830 the company removed a weir, been placed across the river, to a part of the river higher the same time heightened the weir, in consequence of working of the mill was obstructed, and the value of the

Where a company removed an old weir, and erected a new one higher up upon a river, and thereby injured a mill—*Held*, that the owner of the mill was entitled to compensation under the statute, although the plans and books of reference referred to in the statute did not shew that the company intended to alter the site of the weir.

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property lessened. An application was afterwards made to the company for compensation, without success. In answer, it was sworn that neither the new weir nor the site thereof was referred to in the plans or books of reference mentioned in the act; that none of the plans or books shewed that the company sought to obtain the power of changing the site of the weir, or raising it, or in any way altering the height of the water in the Leen, or diminishing the power or value of the mill; that the weir was not in the line of works marked on the maps, and that no part of the estate, through which that part of the river passed wherein the new weir stood, was specified in the books or plans. It was not, however, denied, that the parts of the river Leen on which the mill and the new weir respectively stood were comprehended in the plans.—Lord *Denman*, C. J. The erection of this weir seems directly within the powers given by the act; and the act might be pleaded by the company in justification. This appears to be the very case contemplated by the act. The other judges concurred. Rule absolute.

Under a canal act, which did not limit any time within which the works were to be completed, the works were carried to a certain point in 1816, and in 1835 the company proceeded with the works, and, under the powers contained in the act, destroyed the plaintiffs' railway:—*Held*, that the company had authority to proceed with the works, although so long a period had elapsed.

Thicknesse v. *The Lancaster Canal Company*, (4 *Mee. & W.* 472; 1 *Horn. & Hurl.* 365).]—Action on the case for obstructing the plaintiffs in the use of a railway for carrying coals. The defendants were empowered by statutes 32 G. 3, c. ci, and 59 G. 3, c. cxiii, to make a canal; and in 1816 the canal was completed to a certain point; and nothing further was done near that point until 1835, when the works were recommenced, and the plaintiffs' railway was severed. One of the questions raised in the case (*g*) was, whether the company had proceeded with the works entrusted to them, within such reasonable time as to entitle them to avail themselves of the privileges conferred by the acts of Parliament.—Lord *Abinger*, C. B. The first point stated in this case is, as to the duration of the powers of the canal company, and whether they are entitled, at this distance of time, to complete the line of their canal. I find nothing in the act of Parliament to limit the time in which they may do so. It has been argued that it would be attended with great inconvenience if the time were unlimited, for which reason the Legislature (at least one branch of it) has made a standing order that there should be introduced into all acts of this sort an express limitation as to time (*h*). I do not see that that circumstance throws any light on the construction of

(*g*) See the other points in this case, post, 236.

(*h*) See Lords' Standing Ord., No. 233, ante, 46.

mpleted at a certain date, say till thirty years after-
ing which time the company has seen the owners of
nake erections and improvements, and incur expenses
as in this case, place their fences on the termination
ıal, at the point where it left off; under such circum-
ourt of equity might say, that a party so lying by, and
nother to be misled by his inaction, should be prevented
uing his works at that late period, and destroying that
ld never have been done, but for his own negligence. I do
t a court of equity might not interfere in such a case, but
aw cannot. A court of law must construe this act now,
e the day after the act passed. The powers of ordinary
panies last for many years; they generally have a power
make a particular line of canal, but to make aqueducts
aters into it, to feed it at different points, and this they may
ne to time; nor can I say that these powers are limited,
act point out the time within which they should be ex-
he other judges concurred. Judgment for the defendants.

Others v. *Milner and Others*, (2 *Mee. & W.* 824).]—Upon
tion to dissolve an injunction, Lord Chancellor Lyndhurst
llowing case for the opinion of the Court of Exchequer:
ntiffs represented the Lake Loch Railroad Company, a pri-
ny, who had completed a railway, situate upon the river
tending about three miles in length, towards certain col-
on which considerable traffic was carried on. The Air and
rigation Company, of which the defendants were trustees,
wered by several acts of Parliament to improve the naviga-

A railway company, empowered to take lands under compulsory powers contained in their act, gave notice to the proprietors of a tramroad, that they should require a portion of land which was in the line of the tramroad. No part of the railway had been laid down, nor had any da-

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value of the land —*Held*, that the verdict as to the 2800*l.* was a nullity, the act not authorising the assessment of damages until the damages were actually sustained.

soever and whatsoever, for the purposes in the act mentioned, as little damage as might be in the execution of the several p thereby granted, and making satisfaction, in manner thereinafte tioned, to the owners, &c., for all the damages to be by them su in or by the execution of all or any of the powers of the said

By the 20th section, if the parties could not agree as to the am be paid for compensation, it was directed that a jury should be su ed in the usual manner, "and such jury, upon their oath, shall i of, assess, and ascertain the sum of money to be paid for the p of such lands, &c., and also what other separate and distinct money shall be paid by way of recompense, either for the d which shall or may before that time have been sustained as af or *for the future temporary or perpetual continuance of any n damages* which shall have been so occasioned as aforesaid, cause or occasion of which shall have been only in part obvi repaired by the said undertakers, and which can or will be ne obviated, repaired, or remedied by them." By sect. 27 it was "that the juries shall award all determinations which th give, concerning the value of lands, separately and distinctly fi damages sustained or to be sustained as aforesaid, and shall dist the value set upon lands, and the money assessed or adju such damages as aforesaid, separately and apart from each ot

By sect. 110, if the undertakers should not within five yea for, or cause to be valued and paid for, the lands, &c. whi were empowered to purchase, then and from thenceforth such were to cease. By sect. 111, if the said intended works sh be completed and made navigable and passable, so that boats riages might pass along the whole line, within the space o years from the passing of the act, then, after the expiratio said term of fifteen years, all the powers, authorities, and p given by the act were to cease and determine, save only and in respect of so much (if any) of the works thereby authoris made as should have been completed and made navigable a able within the said term of fifteen years. The statute also co the usual clause, which enabled the company to pay money Bank of England, if the owner of any land refused to accept th as and for compensation. The case stated that the said p railway or tram-road, extending from Stanley Ferry to the tu road, had been staked, set out, and ascertained; but that no the railway had been laid down. It also appeared that the o

of such last-mentioned notice an inquiry was had at the ses-
and upon that inquiry, evidence on both sides having been
to, and the matters of such evidence, and of the arguments of
, having been left by the Court to the consideration of the
ey the said jury gave their verdict as follows, viz. :—

Eight perches of land, value . . .	£6
Present damages	0
Future damages	2800

ediately upon the verdict being given, the counsel for the under-
objected to that part of the finding whereby the jury assessed
m of £2800 for future damages; nevertheless the justices pro-
d their judgment according to the finding. The undertakers
e sum of £6 and no more into the Bank of England, for the use
company; whereupon the company filed their bill, and obtained,
e, an injunction to restrain the undertakers from entering upon
d land, until they had answered the bill. One of the questions
bmitted for the opinion of the Court was, whether the defend-
uld take the above-mentioned piece of land, without paying or
ing the said sum of £2800, assessed by the jury (*i*).

d *Abinger*, C. B.—I think that the verdict in respect of these
gent and imaginary damages, which may never occur at all,
re nullity. The true construction of the act is, that the "re-
g damages" must be taken to mean, damages ejusdem generis
hose which have already arisen; it being open to a party, when
description of damage ensues, to have a new remedy, either
ion, or, if the act justifies it, by a jury summoned pursuant to
t of Parliament. In the latter case, if, when the company
enced their operations, (the land having previously been valued

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shall obstruct the passage on the Lake Loch road, or continually obstruct the cross roads, so as to prevent the traffic upon them, then the parties so damaged may apply for compensation under that particular head, and obtain it. But in this case the jury have found no damage yet sustained; how then can they find a verdict for contingent damages, which may never occur at all? As, for example, what would be the case if the company were not to make the tram-road, but having taken and paid for the land, were to leave it in its present condition for ever? It seems to me that such a verdict is a nullity, and that no action would be maintainable upon it.—*Parke*, B. The act is undoubtedly very obscurely worded, and the obscurity is increased in no small degree by the section which prohibits the undertakers from entering upon the land till they have paid for it. However, looking at the clause in question, it seems to me that the jury have no right to assess prospective damages, except after (if I may so say) an example of damage has already occurred; that is in accordance with the language of the section, and I think it would be impossible for the jury fairly to perform their duty, without having such an example to go by. The undertakers have a right either to treat with the parties interested in the lands, or to go before a jury. Then the provision respecting the jury is this: that "they shall inquire of, assess, and ascertain the sum or sums of money to be paid for the purchase of such lands, grounds, &c.; and also what other separate and distinct sum or sums of money shall be paid by way of recompense, either for the damages which shall or may before that time have been sustained as aforesaid," *i. e.* which shall or may before that time have been sustained by the execution of any of the powers thereby granted—that is, something that is actually done, something that is completed; but not only for that, but also "for the future temporary or perpetual continuance of any recurring damage, which shall have been so occasioned as aforesaid;" *i. e.* the cause of which shall exist in the execution of the powers of the act. The cause of the damage must, therefore, have existed in something more or less done or completed by the company. And there is a further limitation to cases where the cause or occasion shall have been only in part obviated or repaired by the undertakers, for that must be the fair reading of the clause, and "which can or will be no further obviated, repaired, or remedied by them." The cause of injury, therefore, must exist in some work of the company which is already then done; and that work must be in such a state, as to be incapable of fur-

id from these data they have the power of making a contin-
ssment of damages. I would put, as an example, the case of
through the banks of the canal, or the interruption of some
urse, the effect of which you can collect from a bygone time,
afford some proper estimate with regard to future time. And
hat case only, as it seems to me, that there is power to assess
lamages. In the present case, the jury expressly find that
no injury already committed, and therefore there is nothing
ct of which they can assess future damages; and their finding
o me to be totally void as to that part, though it is good for
value set upon the land itself. Whenever the Lake Loch
ay do receive any actual injury from the works of the under-
by the interruption of their trams from moving along the road,
often as they receive any injury, they will have a right to call
jury to make a compensation to them. *Bolland* and *Alder-*
, concurred.

Compensation claimed for premises rendered of less yearly value by constructing the West India Docks (formed under 39 Geo. 3, c. lxix) ought to be calculated, by ascertaining the yearly value of the premises at the time of the passing of the act, and not at the time when the claim for compensation was made.

ning v. *The Commissioners of the West India Dock Act*, (9 *East*,
—The statute 39 G. 3, c. lxix, establishing the West India Dock
ny, by section 121, reciting, that, in consequence of the works
d by the act, some of the present legal quays, &c., and cer-
rehouses, and divers other tenements in the port of London,
perhaps, become less valuable, by means of the trade of the
ing in part diverted, than the same respectively are at present,
ers owners and occupiers of such legal quays, &c. may thereby
damage, and the yearly and other receipts of the governors
st's Hospital, for the car-rooms, for using free carts, may also
r happen to be lessened, enacts, "that, in case such legal

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rooms, shall, by reason of any of the same works, happen to be lessened, the commissioners of compensations shall make such just and liberal compensation, &c., to the owners or occupiers, &c. of the same legal quays, &c. so rendered less valuable respectively, and to the governors of Christ's Hospital, as shall be agreed upon between the said commissioners and such owners, &c.

The plaintiffs were the owners of a warehouse which had been used by them, for the purpose of receiving West India produce, before the passing of the act, and for which a considerable rent was received; and this rent had progressively increased, owing principally to the increasing importation of colonial produce into the port, and the consequent increased demands for warehouse-room, from a period of about four years before the passing of the act, in 1799, *till the opening of the docks in* 1820, when their profits ceased, in consequence of the removal of the trade to the company's docks; and the commissioners having rejected their claim for compensation for this loss, it came on to be tried, in the form directed by the act, before the Recorder of London and a jury, when, the claimant's title to some compensation being established in evidence, a question of law arose respecting the time from which the average of the value of the premises should be calculated back; viz. whether, in estimating such value, the jury were confined to take an average upon the actual profits made of such premises, for one or more years prior to the 12th July, 1799, when the act passed; or whether it was lawful for the jury to take into consideration the then value of the premises, evidenced by the actual profits made subsequent to the passing of the act? The Recorder instructed the jury not to take into their consideration any evidence of the profits made of such premises *subsequent to the passing of the act*, but to confine their attention to the consideration of the profits made of them prior to that act. The jury having calculated the compensation according to this direction, the Court of King's Bench decided, that the direction was correct in point of law, because, if the subsequent profits were allowed to be calculated upon, it would in effect be to adopt and proceed upon a calculation of the value *at the time of the claim*, instead of the value as taken before the passing of the act, which was the standard of valuation expressly adopted and referred to by the act itself.

A railway company purchased a subsisting lease

Mouchet v. *The Great Western Railway*, (1 *Railway Cases*, 567).]—Injunction. The defendants, in pursuance of the powers of their act,

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of certain lands, and then gave the reversioner in fee notice that a jury would be summoned to assess compensation to him for his interest in the lands. The reversioner, who contended that the company had no authority to take more than a portion of the lands, applied for an injunction to restrain the company from summoning a jury:—The Vice-Chancellor refused the injunction.

a subsisting lease in certain lands, and they then gave the plaintiffs, the owners of the reversion in fee, for sum- jury to assess the value of the fee simple and inheritance The plaintiffs now filed their bill, insisting that the com- not authorised by their act to take more than a certain the land, and praying an injunction to restrain them from to assess the value of the excess beyond that portion. of the Great Western Railway Act, enacts, "that upon pay- nder of the monies awarded by the jury, as compensation r any injury thereto, the said lands, and the fee simple and e thereof, should thenceforth be vested in and become the rty of the company, and that such payment or tender should merge all terms of years, and to destroy all estates tail, &c." *Chancellor.*—Supposing the plaintiffs to be right in their of the case, the proceedings before the jury as to the portion d, which they say the company are not entitled to take, will ty. A jury can only assess the value of property which thorises the company to take; consequently, if the com- not authorised to take this portion of land, the jury cannot value for it. So, also, with regard to what has been said operation of the 42nd section of the act; that operation, if tiffs are right, can never take effect. The plaintiffs say, mpany cannot lawfully acquire the inheritance in a portion d,—be it so: then the company can only acquire the inhe- those lands which the act authorises them to take; and if not authorised to take the land, they never can, by means of ment by a jury, or any tender or payment, acquire the in- of that land. There is no question raised before me of an o take a possession not founded in law; there is no doubt the possession of the company is lawful; they will have, s their lease endures, all such rights as any other assignee se would have, either at law or in equity. With respect to g the company from banking up the land in question—if any, when in lawful possession of the land, had attempted e land in a manner which might cause some sudden and injury to the inheritance, then the reversioner might come urt for redress; but no case of this kind is made by the bill. fused, with costs.

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2. *Compensation Cases, where Lands, &c., have rectly injured.*

A navigation company was empowered to make new cuts and otherwise to improve a navigable river: and the act gave compensation to persons aggrieved, damaged, or injured "by any work made by the commissioners, or by the operation or effect of any such work." On a bend in the river there was an ancient towing-path, belonging to the owner of the adjoining land. The commissioners made a short cut from one extremity of the bend to the other, so that the ancient towing-path was no longer frequented, whereby the owner was deprived of his tolls, and the navigation of that part of the river was impeded:—*Held*, that the owner of the towing-path was entitled to receive compensation.

Where commissioners refused to entertain a complaint—*Held*, that it amounted to "an order, determination, and judgment," from which an appeal lay.

Rex. v. *The Commissioners of The Thames and Isis Navi* & *E.* 804).]—Mandamus, requiring the defendants to money awarded to Lord Boston, for compensation, 52 Geo. 3, c. xlvii, which empowered the defendant the navigation of the River Thames. The mandamus Lord Boston was seised in fee of an ancient towing-path the river, and to the exclusive right of towing barges taking reasonable tolls for such towing by his horses; t missioners made a cut, by which the barges were enabled part of the river, dispense with the use of the horses, the tolls; that the commissioners had by the cut inj channel of the river, and made the navigation of the less easy and convenient, and diverted the navigation from Lord Boston's towing-path, and rendered the tow his exclusive right wholly unprofitable; that Lord Bos plained to the commissioners and demanded compensat commissioners, at a subsequent meeting, made an orde tion, and judgment, that they could not accede to the that Lord Boston, being dissatisfied with such order, a Quarter Sessions, who ordered the commissioners to £1000, in full compensation for the injury sustained £200 costs, which the company refused to pay, and t commanded them to pay. The defendants made a retur which stated, that the said commissioners, believing t plainant had no claim to compensation, did not hear ev complaint or the amount of the alleged loss, and n complainant that they refused to accede to his applicat complainant, treating this refusal as an order, &c., appea the appeal, the commissioners objected that the refusa order, but the Quarter Sessions overruled the objection enabled navigators to avoid a dangerous bend of the ri complainant was no further entitled to the path than a land; that they, the commissioners, had not obstructed towing-path, nor placed any obstacle to the navigatio towing-path; that parties might, and sometimes did, sti

annel. The sections of the statute referred to in the argu-
tated in the judgment.

nman, C. J.—His lordship, after stating the facts, pro-
follows:—The cause shewn by the commissioners in their
hat the damage described is not, within the statute, a griev-
eir argument was, that a mere diversion of custom from the
towing-path, who lets out his horses to be used there, can
re considered as an injury, than could the loss of guests
pon the owner of an ancient public-house, by making a new
ing off a bend by which the house stood. We were re-
uthorities where a claim somewhat similar was held inad-
). The answer is to be found in the very peculiar lan-
this statute, which differs altogether from the numerous
same nature which were sent to us after the argument (*m*).
have found little difficulty in deciding that such damage
give the sufferer the denomination of a party aggrieved.
gh the remedy is provided for the party who *thinks* himself
, and that question is sent to the Quarter Sessions, yet those
uld probably have not been held extensive enough to pre-
judgment, that such damage was no grievance. But the
powers every one who may think himself aggrieved, damaged,
l by any work made by the commissioners, or by the opera-
ffect of any such work, to apply for compensation to the
oners, who are to make such order, determination, and
thereon as to them shall seem just, and give such satisfac-
e party complaining as to them shall seem reasonable: and,
by the commissioners, the party is to apply to the sessions,
equired to entertain such appeal, and to make such order
lication thereon as to the justices shall seem just, and award
s as they shall think just, which order and determination
inal. Lord Boston asks for compensation, and is refused.

this point the following were cited:—*Rex* v. *The ners of the Nene Outfall*, 875, post, 218; *Rex* v. *The ock Company*, 5 Ad. & E. 233; *Rex* v. *The Bristol pany*, 12 East, 429, post,

the direction of the Court, copies of several local acts were sent to the learned judges, for the purpose of shewing that (as was contended) there was nothing peculiar in the language of the present act. On this point the General Turnpike Act, 3 Geo. 4, c. 126, ss. 85, 145; and 4 Geo. 4, c. 95, s. 87, were also referred to.

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On his appeal to the sessions, that Court is invested with cognizance of the cause, and enjoined to make such order thereon as seems just; a much wider power than merely to assess damages for some recognised injury. Can we say that they have done wrong, in deciding that the damage has accrued by the operation and effect of works done by the commissioners? On the contrary, to assert that it has not, would have been a direct untruth, in the ordinary sense of the words; and no other sense is attached to them by any clear legal authority. Another objection to the mandamus, that the order of sessions included two objects, for one of which the prosecutor was clearly entitled to no compensation, was not much pressed at the bar, but has occupied the attention of the Court. For if the £1000 were awarded, partly for the loss of profits from the towing-path, and partly for obstructing the old channel, and the latter had certainly not been made out, we were disposed to think that the judgment comprehending both could not have been sustained. But this objection also is cured by the extensive language of the act. The mandamus alleges the obstruction as one cause of complaint, and the loss of profits from the towing-path as another; and recites, that the sessions gave their compensation for "the said injury;" that must be the twofold injury. The return, indeed, denies that the channel was at all obstructed, and states, that all who prefer that course may still pursue it. But the sessions must be taken to have found the fact, when they gave compensation for it; and their order to do what to them seems just and reasonable, is made final and conclusive. If the sessions did not inquire into that point, the return might have so averred, and an issue of fact might have been raised. The fact of the commissioners asserting the channel not to have been obstructed, is quite consistent with the fact of the sessions having adjudged that it was. Another objection of a technical kind was more relied on—that the jurisdiction of the sessions did not attach, because the commissioners had come to no order, determination, or judgment, from which an appeal would lie. On the facts, we have not the least hesitation in saying, that the refusal to accede to Lord Boston's application, or to hear any evidence in support of it, was a plain determination that he was not entitled to what he claimed, and consequently a proper subject of appeal. This is one of a class of cases which has become exceedingly numerous, in which the Court has found itself constrained to give the words of a private act an effect probably never contemplated, and very probably not intended by the Legislature which enacted it.

ward a peremptory writ of mandamus.

v. *The Eastern Counties Railway Company*, (2 *Q. B.* 347; *S. C.*, *way Cases*, 736).]—Mandamus, requiring the defendants to compensation to one John Collingridge. The following facts ed on the writ of mandamus, and the return thereto, the case ; been argued on a concilium. The writ suggested, that John gridge was assignee of a lease for ninty-nine years, of a leasehold on the road leading from Bow to Old Ford, Middlesex; that, time of the sustaining of the damage hereinafter mentioned, part said estate was bounded on one side by a highway, called the ld Road, and was on a level with the same; "that the com- in making the railway, and to carry the same over the said ave lowered the same to a great depth in front of the land, and y the land is greatly deteriorated in value, and the access there- n the road, has been greatly impeded; and, by reason of the de- from the said land to the road it hath become necessary to additional fences, and to level certain parts of the land against d, for the beneficial enjoyment of the same." The writ then l that, under the provisions of the statute, (6 & 7 W. 4, c. cvi), d applicant was entitled to receive compensation for the da- sustained by him, by the means aforesaid. The return to the ated, that the company, acting under the statute, had made a y, in the line and over the lands delineated upon the plans and ed in the books of reference, &c., in accordance with the pro- of the act; that the said premises of the said John Colling- are not set forth or mentioned in the said schedule, nor were acquired for the purposes of the railway. The return then

Where a public road adjoining the land of the applicant was lowered by a railway company, under the powers of their act, whereby the access to the land was impeded, and additional fences made necessary.—*Held*, that the owner of the land was entitled to compensation, although none of his land had been taken for the purposes of the act.

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owner and occupier of, nor is he interested in any lands through over, or upon which the said railway is made or constructed, nor any lands taken or used by the said company." Sections 9 and the statute (upon which the question in issue chiefly depends) fully stated in the judgment of the court.

Lord *Denman*, C. J.—The point is, whether the compensation in sect. 29 be large enough to include the case of the appl none of whose land has been used by the company. It is obse that no question arises upon sect. 9, which empowers the comp conduct their undertaking; their powers being, not only to take but also to alter, raise, or lower any roads or ways for their venience, "making full satisfaction, in manner hereinafter men to all persons," &c. interested in any lands which shall be t used, or injured, for all damages by them sustained in or by r of the execution of the act. Upon which clause it is importa remark, first, that it in terms comprehends cases of injury indep ent of taking land; and next, that it is assumed that the satisfa to be so made (which, if the parties cannot agree, must refer t compensation clause) is to extend to all the cases of injury en rated, one of which, as we have just observed, is injury to any pe whether his land be taken or not. It is observable, also, that the section also plainly refers to cases wherein a jury may be summ to inquire into "loss or injury," "sustained, or supposed to be tained, in consequence of the execution of any of the powers of act," without any mention of the taking of land, provided a c notice by the claimant has been previously given. It now re for us to consider whether, although the alleged injury be withi 9th section, and it is there assumed that such injury is withi compensation clause, the language is so restricted as necessar exclude it from that clause. The language of it (section 2 "And for settling all differences which may arise between th company and persons interested in any lands which shall be t used, damaged, or injuriously affected by the execution" of th it is enacted, that "if any of the parties entitled to receive such chase-money, or other compensation as aforesaid, shall refuse to a such purchase-money as shall be offered," "a jury is to be summ and such jury shall inquire of and assess, and give a verdict fo sum of money to be paid for the purchase of such lands," an the sum of money to be paid by way of compensation, either fo damages which shall before that time have been done or sustain

aforesaid, or for or by reason of the severing or dividing the same from other lands, whereof, wherein, or whereto any such "persons as aforesaid shall be seised, possessed of, or interested in." Then follows, "which satisfaction, recompense, or compensation for such damage or loss, shall be inquired into, and assessed separately and distinctly from the value of the lands so to be taken or used as aforesaid." Now it must be admitted, with reference to this part of the section, that what the jury is specially directed to find is applicable to the case of land taken, and of some ulterior damage thereupon. And the argument is, that, because that precise injury is specially provided for, all others are virtually excluded. On the other hand, it is to be observed that the words "damaged, or injuriously affected" may, and we think ought, to extend to injuries mentioned in the 9th section, and to this injury amongst the rest. We also think, that, where the purpose to give compensation in such a case has been so clearly expressed, every fair intendment ought to be given to effectuate that intention. Before we conclude, we shall advert to an argument much pressed upon us:—that, if we make this rule absolute, any injury to land at any distance from the line of railway may become the subject of compensation. If extreme cases should arise, we shall know how to deal with them; but, in the present instance, the alleged injury is to land adjoining a road which has been "lowered" under the provisions of the act, and which is therefore land injuriously affected by an act expressly within the powers conferred upon the company. A peremptory mandamus must therefore be awarded.

Turner v. *The Sheffield and Rotherham Railway Company*, (10 *Mee. & W.* 425; *S. C.*, 3 *Railway Cases*, 222).]—Action on the case by the plaintiff, as reversioner of a starch-house and premises. The declaration stated, that the plaintiff was the owner in fee of a certain starch manufactory and premises; and that the defendants, without the leave and license of the plaintiff, built a railway station and other works upon land near the said manufactory, by means of which the light and air were prevented from coming to the said premises, and large quantities of dust and dirt were drifted and blown off the said railway station into the said manufactory, by means of which the same was greatly deteriorated in value.—Plea, that the defendants are a body corporate created by stat. 6 & 7 W. 4, c. xix; that the said land was, and still is, land purchased by the defendants in pursuance of the powers of the act for the purpose of making a station, warehouses, and other

Where a railway act contained the usual clauses as to compensation, and also a proviso that nothing therein contained should authorise the company to take or injure any house not specified in the schedule:—*Held*, that an action could be maintained against the company to recover compensation for damages caused to a house not specified in the schedule, in consequence of dust, and obstruction of light, arising from the erection of a railway station and embankment at a place adjoining to the house.

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buildings, and for other purposes connected with the undertaking thereby authorised; and that the said railway station, &c., were erected, in the bonâ fide execution of the powers by the said act granted.—Replication, that the premises mentioned in the declaration were erected before 30th November, 1835, and the said grievances were committed without the consent in writing of the plaintiff, and that the premises were not specified in the schedule annexed to the act. Demurrer and joinder. The following are the material sections of the act:—Section 5 gives power to the company to make the railway, &c., upon the lands, &c., delineated in the map, and described in the books of reference, doing no unnecessary damage, and making satisfaction to the owners and persons interested in the lands, &c. Section 20, "Provided also that nothing herein contained shall authorise the company to take, injure, or damage, for the purposes of this act, any house or building which was erected before the 30th November, 1835, without the consent in writing of the owner thereof, except such as are specified in the schedule to this act annexed." Section 35, for settling all differences which may arise between the company and the several owners, &c., of lands which may be taken, damaged, or injuriously affected by the execution of any of the powers hereby granted, enacts, "That if any person shall not agree with the company as to the amount of compensation, &c., a jury is to be summoned to assess the money to be paid for the purchase of lands, and also the money to be paid by way of compensation, either for the damages which shall before that time have been done or sustained, or for the future temporary or perpetual, or for any recurring damages which shall have been so done or sustained as aforesaid, and the cause of which shall have been in part only obviated, removed, or repaired by the company, and which cannot or will not be further obviated, removed, or repaired by them; which compensation shall be assessed separately from the value of the lands so to be taken." Cur. ad. vult.

Parke, B.—We think the defendants were not authorised to cause the damage complained of, and that the plaintiff is entitled to judgment. The question turns on the 20th section of the act: adopting the ordinary grammatical construction of the clause, the company could neither take the house in question nor do any act by which it should be injured; and such construction certainly ought to prevail, unless it leads to an absurdity, or be manifestly repugnant to the intention of the legislature, as collected from the context, in which case the language may be modified, so as to obviate such absurdity or cure

; exposed to actions for unforeseen consequential damages
n their acts to houses, &c. not comprised within the sche-
that point, however, we pronounce no judgment. But in
) as this, in which the damage could have been foreseen
ation and embankment were made, we see no reason to
words of the clause, and, consequently, the company are
is action. As this house was erected before 30th Novem-
he company ought to have considered whether the con-
f any of these works would be injurious to it, and caused
erted in the schedule; and if that had been done, the
he house would have been put on his guard, and might
ed the act. It was the fault of the company to omit it,
nust suffer for the omission; and as they cannot now be
o purchase the house directly without the owner's consent,
not be allowed to buy it indirectly, by causing its lights to
ted, and then leaving the owner to receive compensation
act. Judgment for plaintiff.

e Bristol Dock Company, (12 *East*, 429).]—Mandamus to the
) to issue their precept to assess compensation to the appli-
injury sustained in consequence of the dock works. The
were brewers, holding a brewhouse at Bristol for a long
ars. At the time of passing the Dock Act, 43 G. 3, these
were supplied with water fit for brewing from the river
which the brewery was contiguous, which water was brought
brewery by pipes communicating with the river at low-

Where brewers had been accustomed to obtain a supply of water fit for brewing from a public river, but, by means of dock works authorised by Parliament, the water became noxious and unfit for use:—*Held*, that the use of the water having been common to all the

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person before the act passed had done anything to deteriorate the water of the river, these parties could have brought an action as for a private injury to their property. *Scarlett* argued that they might, and that there were instances where persons, having acquired the right to use the water of rivers for their own purposes, had maintained actions on the case against those who disturbed them in the enjoyment. But by Lord *Ellenborough*, C. J.—Those were cases where the owners of the property by long enjoyment had acquired special rights to the use of the water in its natural state as it was accustomed to flow, by way of particular easement to their own properties, and not merely a use which was common to all the king's subjects. But here the injury, if any, is to all the king's subjects; and that is the subject-matter of indictment and not of action; if the salubrity of the air were impaired in consequence of the docks, every inhabitant of the place might as well claim a compensation. For general injuries, common to all the subjects, the remedy is by indictment; but that, I suppose, is taken away by the act (which was admitted): then the act has taken away the only remedy which the law would have given for this general injury. *Le Blanc*, J.—These persons have no more claim to compensation than every inhabitant would have who had been used to dip a pail into the river for water for the use of his horse. Rule refused.

Where 200 acres of titheable land were taken and converted into a canal:—*Held*, that, as the act which authorised the taking of the land contained no express provision in favour of the tithe-owner, he was not entitled to receive any compensation for being deprived of the tithes which would otherwise have issued from the land so appropriated.

Rex. v. *The Commissioners of the Nene Outfall*, (9 *B.* & *C.* 875).]—Mandamus, requiring the defendants to assess compensation to the Rev. T. Bennett, for damage done to his rectory and vicarage. It appeared that the applicant was entitled to the tithes of the parish of Long Sutton, and that the defendants had purchased 200 acres of land, which were formerly productive of tithe. The defendants afterwards cut a channel through the land, so that it was incapable of bearing corn or grass, or any other titheable produce. In support of the present application, sect. 34 of the act, which authorised the making of the canal, was referred to. It enacts, that it shall be lawful for all bodies politic, &c., and other persons under any legal disability, and for all other persons whomsoever, who shall be seised, &c. of any lands, &c. or hereditaments which shall be wanted for any of the purposes aforesaid, to contract for and sell the same lands, &c. or hereditaments, and to convey and assure the same unto the said commissioners, absolutely and in fee simple. By the 35th section, all bodies corporate, &c., and other persons, shall accept and receive

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such compensation for the value of such lands, &c. and hereditaments, or for any damage that shall be done thereto in the execution of any of the works by this act authorised to be made, as shall be ascertained in the manner mentioned in the act; and the said commissioners may enter upon, and thenceforth, for ever, have, take, and enjoy the said lands and hereditaments for the purposes of the said act.

Littledale, J.—This is the first application I remember for a compensation for loss of tithe, sustained by a rector by reason of land having been converted to a purpose which rendered it incapable of producing tithe. If the Legislature had intended that the rector should have such compensation, they would undoubtedly have introduced into the act an express provision for that purpose. Without an express enactment, it is quite clear that the rector can have no right to such compensation. It is insisted, that, the right of the rector to take tithe being an incorporeal hereditament, he is entitled to compensation, because he is a person interested in an hereditament. I think it is not an hereditament within the meaning of that word in this act of Parliament. It is true that he may have sustained damages by reason of the commissioners having taken the land, and thereby rendered it incapable of producing tithe. That is not a damage which the law considers as constituting any injury to the rector. There must be a damage accruing from the wrongful act of another to constitute a civil injury. If the owner of the land had suffered it to lie waste, and thereby rendered it incapable of producing tithe, the rector would sustain a damage, yet he could not maintain any action against the landowner, because the damage would not have been caused by any wrongful act. The commissioners have probably purchased the soil from the former owner, and thereby acquired the rights of owners. If that be so, they are entitled to use the land in such a manner that it shall not produce tithe. The other judges concurred. Rule refused.

The lessee of coal mines received a notice from a canal company not to work the colliery within eight yards of the canal, which notice they were empowered to give under the Canal Act. The company also purchased of the lessor all his interest in the

The Barnsley Canal Company v. *Twibell*, (13 *Law Journal, Reports in Chancery*, 434).]—This case came on upon a motion to dissolve an injunction which had been granted to restrain the defendant from proceeding before a jury, summoned by the commissioners under the Barnsley Canal Act, to ascertain the compensation to which he might be entitled for his interest in certain coal, which the plaintiffs required to be left for the security of the canal. The question turned on the construction of a local act, 33 G. 3, by which the plaintiffs were in-

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coals so reserved: —*Held*, that the lessee was nevertheless entitled to receive compensation for the loss of the profit which he would have made on the coal, if he had not been thus restrained from working the colliery.

corporated; and by sect. 40, it was declared, that the act was not to prejudice or affect the right of any owner to the minerals under any of the land taken by the company; but that it should be lawful for them (subject to the restrictions thereinafter contained) to work and get the minerals, not thereby injuring the said canal. And it was further enacted, that, "if the owner or worker of any coal mines should, in pursuing such mine, work so near, in the opinion of the said company, to the said canal, as to endanger or damage the same, or, in the opinion of the said owner or worker of the said mines, to endanger or damage the further working thereof, then it should be lawful for the company to treat and agree with the owner or worker for all such coal as might be near or under the said canal, as should be thought proper to be left for the security of the said canal or mine as aforesaid." And in case the company and the worker of any such mine could not agree as to the amount of compensation, it was to be settled by a jury, as thereinbefore mentioned; and, upon payment of the money, the owner or worker of such mine was to be perpetually restrained from working such mine within those limits. It appeared that the canal had been completed for several years, and it passed for 495 yards through the estate of Mr. Beaumont. The defendant was lessee under Mr. Beaumont. Mr. Beaumont was entitled to the coal under the canal and towing-path; but he was not entitled to the coal under the land on each side of the canal, because the defendant had, under his lease, a right to get it, upon paying Mr. Beaumont a certain consideration. It also appeared, that the plaintiffs had served the defendant with a notice not to touch the coal within eight yards of either side of the canal, and the defendant claimed £550 for compensation. The plaintiffs afterwards paid Mr. Beaumont a sum of money for his interest in the coal under the canal, and under the eight yards on each side; but refused to pay the defendant any compensation, and filed the present bill.

The *Master of the Rolls*.—It is argued that the plaintiffs had paid the whole value of the coal to Mr. Beaumont, and that nothing more can be required from them. Having, as they say, paid to Mr. Beaumont the full value of the coal in the bed, they are under no obligation to give to the defendant any compensation for profit which he might have made by selling the coal which he intended to obtain under his lease, and the rather, because the act of Parliament informed the defendant of the plaintiffs' powers, and that he was not to work so as to injure the canal. And it was further argued, that the court

to be constituted under the act is only to determine the compensation in cases where it is agreed, or in some way decided, that some compensation is to be paid; the court, as it said, having no jurisdiction to decide the question, whether any or no compensation is to be paid. I consider it to be clear that the plaintiffs are not entitled to an injunction, if the defendant be entitled to any compensation, the amount of which has to be ascertained; and I am of opinion, that the defendant, under his lease, had an interest in the coal under the eight yards on each side of the canal; he had a right to get the coal and to sell it, upon paying the sums which became due to Mr. Beaumont. Upon this dealing, there might have been profit, which he is prevented from making. The value of the coal in the bed, or the price paid to the coal-owner, can be no compensation to the coal-worker for the loss of the interest which he had acquired. The ground on which it is argued that he should have no compensation is, that when he took his lease he had notice, or was informed by the act of Parliament, that he was not to work the coal so as to injure the canal. But, at the time when he took his lease, he had no notice that the plaintiffs would require eight yards of breadth of coal to be left on each side of the canal. The coal under the canal was not comprised in his lease, and he had no interest in it; but he did not know that the plaintiffs would require more or less than eight yards, or, indeed, any breadth of coal, on each side of the canal. He knew that he was not, by working his coal, to injure the canal; he also knew that the plaintiffs were entitled to inspect his workings, and, if he worked contrary to the directions of the act, were entitled, at his expense, to make the repairs rendered necessary by his improper working; but as the plaintiffs did not think fit, for so many years, to give any notice as to the quantity of coal, if any, which they required to be left, it does not appear why the defendant might not enter into an agreement for working and getting all the coal comprised in his lease. I think it very probable that the powers given by the act might have been so exercised as to enable the plaintiffs to buy the coal under the canal, and a reasonable distance on each side of them, at the value of the coal in the bed; but, for reasons of their own, they probably desired to delay the notices as long as they could; they left it quite uncertain whether they would or would not require any coal to be left for the safety of the canal, and I think that they cannot justly complain of any rights which the coal-owners may have conferred on the coal-workers during the time that their notices were delayed for their

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own convenience. And, under the circumstances, I am of opinion, that the defendant lawfully acquired an interest in the coal which the plaintiffs desire to be left for the safety of the canal. Injunction dissolved.

A party who sustains damage by reason of being prevented from working mines adjacent to a canal, must, in order to obtain compensation, pursue the remedy provided by the statute. He cannot, therefore, maintain an action on the case, where the statute directs a feigned issue (n).

Fenton v. *The Trent and Mersey Navigation Company*, (9 *Mee. & W.* 203; *S.C.*, 2 *Railway Cases*, 837).]—The plaintiff brought an action on the case against the defendants, for damages sustained by him. The declaration, after referring to 1 W. 4, c. lv, an act relating to the navigation from the Trent to the Mersey, stated, that the plaintiff was the owner of certain mines and minerals within the distance of 40 yards from the tunnels belonging to the defendants, under Harecastle hill, and which mines had become and were workable in the regular course of working; whereupon the plaintiff had given notice to the defendants, and required them to make satisfaction to the plaintiff for his interest in all such parts of the said mines as shall be required by the defendants to be left ungotten or unworked for the preservation of their tenants and works, &c. Averment, that the defendants had required that the said mines should be left unworked, and that the same were, in pursuance of the said notice, left unworked accordingly; nevertheless, the defendants had neglected to pay the plaintiff the value of the said mines and minerals. Plea, that the plaintiff had not delivered to the defendants a declaration in any action upon a feigned issue, in respect of the said mines and minerals. Demurrer and joinder.—The plaintiff's title to compensation was not disputed; but the question raised by the demurrer was, whether the plaintiff was entitled to maintain an action on the case. The case turned upon the construction of several sections of the statute, which are fully stated in the judgment of the court.

Rolfe, B.—This act is certainly obscure, but we have come to the conclusion that the only remedy is that of a feigned issue. The company is empowered, in the ordinary way, to take lands, and, by the 118th and subsequent sections, provision is made for ascertaining, by a jury, the sum to be paid, as well for the land taken as for any damage occasioned by the company. But this is not all. The navigation, it seems, traverses a mining district, and passes through two tunnels under Harecastle hill; and, by section 170, it is provided, that no mine-

(n) See *Lyster* v. *Lobley*, 7 Ad. & E. 124, post, 238; *R.* v. *North Midland Railway Co.*, 2 Railway Cases, 1, ante, 195.

owner shall work any mine within forty yards of the tunnels without leave of the company. Section 171 enacts, that, if the company, instead of insisting on their full right of having forty yards left unworked, should require less than thirty yards to be so left, then the mine-owner may insist on the necessity of leaving, for his security, any greater quantity unworked, not exceeding thirty yards; and the question so in dispute, as to the quantity necessary to be left for the security of the mine-owner, is to be tried, settled, and determined by an issue at law. The 172nd section provides, that whenever any mine becomes workable within forty yards of the tunnels, the mine-owner shall give notice to the company, and thereupon the company shall pay to the mine-owner for so much of the mine within the forty yards as they shall require to be left unworked, or for so much of the mines as, under the provisions of section 171, it may be ascertained to be necessary to leave unworked for security of the mines; provided that no mines shall in any case be worked under the tunnels; but whenever any such last-mentioned mines shall become workable, satisfaction shall be made by the company for the same, "such satisfaction to be ascertained, fixed, and determined by an issue at law." There is no doubt but that, by the express terms of the 172nd section, the plaintiff is entitled to be paid for the value of the forty yards of mine left unworked for the security of the navigation, and the only question is, by what proceeding he is to enforce his right. It may be conceded, that the more obvious construction of this section would refer the words "such satisfaction" &c. only to the satisfaction immediately preceding, namely, the satisfaction to be paid, at all events, for the mines left unworked under the tunnels. There is, however, nothing grammatically incorrect in referring the words "such satisfaction" to every species of satisfaction mentioned in the clause; namely, to the payment to be made for mine within the forty yards, for mine within the thirty yards, and for mine actually under the tunnels; and, in furtherance of what we cannot but suppose must have been intended by the Legislature, and to avoid the strange incongruity of having one mode of deciding questions as to the value of mine within forty yards of the tunnels, and another as to the value of mines along the rest of the line of the canal, and under the tunnels themselves, we feel bound to adopt the latter construction of the words "such satisfaction," and to hold them applicable to every case for which satisfaction is made payable under the 172nd section. The defendant is therefore entitled to the judgment of the court.

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3. *Compensation Cases, on Claims made by Lessees of Lands.*

Where a statute gave compensation to any tenant from year to year who might sustain injury "in respect of any interest whatsoever, for goodwill, improvements, tenants' fixtures, or otherwise:"—*Held*, that a tenant from year to year, whose tenancy had been put an end to by a legal notice to quit, was entitled to compensation, it appearing that she had been many years in possession under an assurance from her landlord that she should hold the premises as long as she paid her rent.

But where a tenancy was for one year, determinable at three months' notice, at any time, with a stipulation against underletting, except with the lessor's leave:—*Held*, that no compensation was recoverable.

Ex parte Farlow, (2 *B. & Ad.* 341).]—This was a rule for a mandamus to the Hungerford Market Company, requiring them to assess compensation to one Ann Farlow. The company were incorporated by 11 G. 4, c. lxx. Section 17 enacts, that every lessee or tenant for years or at will, and every other person, should deliver up possession of their premises to the company at three months' notice, the company making such compensation to the tenant or lessee, in case he should be required to quit before the expiration of his term, as they should think reasonable. Section 19 provides, "that any person, tenant for years, from year to year, or at will, or occupier of any part of the market, and other hereditaments, who may sustain or be put unto any loss, damage, or injury, in respect of any interest whatsoever, for goodwill, improvements, tenants' fixtures, or otherwise, which they now enjoy, by reason of the passing of this act," shall receive compensation from the company in the manner therein prescribed. Ann Farlow was the widow of a person who had carried on the business of a carman on the premises in question. It did not appear that John Farlow had any lease; but he and his father had been tenants of the property for sixty years. The widow occupied them from the time of her husband's death, as tenant from year to year, and continued the business. At Midsummer, 1830, after the passing of the act, she received notice to quit; and she in consequence required the company to give her compensation. In support of the rule, it was sworn, that the loss to this party would be very great; that her husband had laid out large sums of money on the premises, being assured by the then proprietor that he should not be disturbed in his possession as long as the rent was duly paid. On the expiration of the time specified in the notice to quit, an ejectment was brought on behalf of the company, and while this rule was depending they recovered possession.

Lord *Tenterden*, C. J.—In this case a mandamus ought to go. It appears that a contract had been made by a new company to purchase a very considerable estate, used as a market. [His lordship referred to sect. 17 of the act.] Then comes the 19th section; and this appears to me to have been intended to provide for that feeble and imperfect interest which many occupiers had in the premises to be contracted

for by this company. It was likely to be foreseen by the legislature, that, when the company was established, and the proceedings taken, which this act had in view, many occupiers of premises in the old market would be dispossessed; and if it was considered that this might be done in the ordinary way, by ejectment, and that the parties should then have no right or claim against the company, I do not see why the 19th section should have been framed. That section is certainly obscure, and incorrectly worded. It is said, "the interest which they now enjoy," must be taken to mean a legal interest, and that all legal interest was determined by the notice to quit. But I think this is not the fair meaning of the words, and that they must be understood as signifying that sort of right which an occupier ordinarily has, of parting with his tenancy to another person for such sum as he may be induced to give for good-will, fixtures, and improvements, and which is often very considerable, though the tenancy be only from year to year, where there is a confidence that it will not be put an end to. This interest, feeble as it may be, (since it is always determinable at a short notice), may justly be considered as matter of value to the owner, and to any other party who becomes the purchaser. The other judges concurred.—Rule absolute.

Other writs of mandamus were applied for on behalf of other persons who also claimed compensation under the above act; but these rules were discharged, upon the ground that the agreements under which the applicants held their premises enabled the landlord, after the expiration of the first year of their tenancies, to give the tenants three months' notice to quit, and also contained a stipulation that the tenants should not underlet or give up the possession of the premises without the lessor's permission in writing.

Rex v. *The Hungerford Market Company*, (4 *B. & Ad.* 592). Mandamus, requiring the defendants to assess compensation to one John Still, under the stat. 11 Geo. 4, c. lxx (*o*). It appeared that the party took the premises at Christmas, 1828, as tenant from year to year, and paid the outgoing tenant £412 for goodwill and fixtures, and expended large sums of money in improvements; that since the passing of the act the company had given him notice to quit, and had brought an action of ejectment against him, which was still depending; and had also, by pulling down the neighbouring houses, ren-

And where a lessee for years, whose term had expired, obtained leave from the company to hold the premises until they were wanted:—*Held*, that his under tenant from year to year was entitled to receive compensation when he quitted possession.

(*o*) See ante, 224.

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dered his house so unsafe that it was condemned by the annoyance jury, and the parish authorities were taking it down. On behalf of the company it was sworn, that the applicant's house was upon an estate purchased by them; that by their agreement with the vendor, (the superior landlord), they were to be entitled to the rents of the estate from the 24th of June, 1830, on which day the then existing lease of the premises expired; that the company, on applying to Still, were informed that one Mr. Tritton was his landlord, and thereupon they requested him to see Tritton, and refer him to the company; that shortly after the 24th of June it was communicated to them that Tritton wished to hold the premises till the company wanted them; and it was agreed between him and the company, that, when possession was required, the company should leave notice for Tritton on the premises, and he would then deliver them up. On the 29th of September, 1831, the company left notice accordingly for the representatives of Tritton (he being dead) to quit on the following Lady-day. *Per Curiam.*—There is no material distinction between this case and *Ex parte Farlow* (*p*). There was a chance of the tenancy being continued.—Rule absolute.

And, under the same statute, the assignee of a lessee for years was also held to be entitled to compensation for the loss of his chance of a renewal of the lease; but not for losses incurred in respect of fixtures and improvements.

Rex v. *The Hungerford Market Company*, (4 *B. & Ad.* 596).—Mandamus to the defendants, on the application of one Gosling, requiring them to assess compensation to him. It appeared that one Wise had demised the premises in question to Day, for fourteen years from the 25th of March, 1818. Gosling purchased of Day the lease, goodwill, and fixtures, in February, 1823; Day informing him that he might rely on a renewal of the lease if he conducted himself well. Gosling made considerable improvements on the premises, where he carried on the business of a confectioner; and it was stated, that, while these were going on, Wise's agent told him that Wise never turned away a good tenant. The lease expired at Lady-day, 1832, and the company brought ejectment against Gosling and turned him out. It was sworn, that the custom on the estate had been, not to dismiss tenants who conducted themselves well. In answer it was sworn, that the premises were part of the estate purchased by the company of Wise, pursuant to agreement entered into before the passing of the act, subject to certain outstanding leases, (mentioned in the act), of which the lease in question was one. That the tenant, by that lease,

(*p*) See ante, 224.

covenanted to repair, &c., and at the end of his term to yield up the premises in good repair, with all fixtures and improvements; and not to let or assign without the landlord's consent in writing; and there was a power of re-entry in case of breach; that, at the expiration of the term, the company had demanded possession, which being refused, they brought ejectment and obtained judgment, and a writ of possession issued. Wise's steward stated, that he had no recollection of having used the expressions stated by Gosling, but had told him, that Wise would sell the estate to the company. He added, that the renewal of leases on the estate was always upon a valuation, and with reference to the current annual value. Sections 17 & 19 of the act 11 G. 4, c. lxx were referred to (*q*).

Lord *Denman*, C. J.—This rule must be made absolute to summon a jury to assess compensation for the damage, if any, sustained by this party by reason of the act having passed, in respect of goodwill, or the chance of a beneficial renewal of his lease. Whatever difficulties arise under this section, are difficulties which the company have brought upon themselves. They have procured an act to be drawn containing a very obscure clause, and it is on condition of carrying that clause into effect that they enjoy the powers with which they are invested as a company. I do not see how the operation of the 19th section is to be carried beyond that of the 17th, except by the construction which was adopted in *Ex parte Farlow* (*r*), and *Ex parte Still* (*s*). The interest in question is certainly a most imperfect one, but the clause ought to receive a liberal construction. *Parke*, J.—There is a distinction as to the fixtures and improvements, because it appears that the party here had no legal interest in these; the inquiry, therefore, will be as to the compensation in respect of injury sustained "for good-will or otherwise;" the fixtures and improvements will not be a subject of assessment, though the jury may consider how far they added to the chance of a beneficial renewal. The other Judges concurred.—Rule absolute.

In re Palmer and the Hungerford Market Company, (9 *A. & E.* 463).—Mandamus, requiring the Hungerford Market Company to assess compensation to one Palmer. By a judge's order the matter was referred to an arbitrator, who set forth in his award the facts

P. held premises under an agreement for one year, and afterwards to quit on three months' notice at any quarter-day. He was not to underlet or give up

(*q*) See these sections, *Ex parte Farlow*, ante, 224. (*r*) See ante, 224.
(*s*) See ante, 225.

... argument. The question turned on sect. 19 of the ... (t). Lord *Denman*, C. J.—This case arises upon ... compensation under the Hungerford Market Act, 11 G. ..., and the only question is, whether Palmer is entitled to be ... for improvements made by him during his occupation ... premises which the company have purchased and used for the ... of the market. The occupation commenced under an agree... made December 28th, 1824, between Palmer, and Wise, the ... owner of the Hungerford Market Estate, of which the premises ... parcel, for one year, commencing the 29th September preced... The agreement contained the following stipulations:—that if Palmer, with Wise's consent, should hold beyond the year, he should quit, or be at liberty to quit, at any quarter day, on receiving or giving three months' notice; that he should not underlet or give up possession to any one, or make any alteration, without the written consent of Wise. He was to keep all the glass entire, and so leave the same, together with all the articles mentioned in a schedule, and all improvements or additions to the premises which he should make during his occupation, for the benefit of Wise. On the 31st July, 1824, Wise had offered the Hungerford Market Estate to Sir T. Tyrwhitt, on behalf of the intended Market Company; the offer was made on certain written terms, to which a decided answer was to be given in eight months. No answer was returned within that period; but, in December, 1830, the purchase was completed. Notice to quit at Michaelmas, 1830, was duly given by Wise on the 23rd June preceding, and Palmer finally gave up possession in April, 1831, after a verdict recovered in ejectment, wherein Wise and the Hungerford Market Company were severally lessors of the plaintiff. In 1826, Wise gave Palmer leave to extend his bar, and during his occupation, and before the passing of the act, Palmer made certain other improvements. These were given up with the rest of the premises, and are valued at 44*l.* 10*s.* The question now to be decided is, whether the company are bound to indemnify him for these improvements. Upon the argument, the several decisions which are reported upon the 17th and 19th sections of the act were cited. These are *Ex parte Farlow* (u), *Ex parte Wright*, *Ex parte Davies*, *Ex parte Still* (x),

(t) See this section, ante, *Ex parte Farlow*, 2 B. & Ad. 341, ante, 224.

(u) Ante, 224.

(x) Ante, 225.

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Ex parte Gosling (*y*). The principle upon which the court has proceeded in these cases, in the construction of the act, is clear and satisfactory: it has been thought that the compensation clauses, the 17th and 19th, should be construed most liberally in favour of those who are to receive benefit from them, and most strongly against the company who framed them; and it has further been considered, that the 19th clause must be extended to other than legal interests, which are provided for by the 17th. These principles, however, do not exclude an examination into the particular circumstances of each application; and where it has appeared that the party has, in reality, sustained no injury from the proceedings of the company, not merely in his legal or equitable interest, but not even according to any expectations which he may reasonably have entertained, the court has refused to interfere; therefore, in *Ex parte Wright*, the party was held entitled to no compensation. Two other rules were discharged at the same time, of parties applying under similar circumstances. This case is shortly reported, but it did not pass without consideration, coming on soon after *Ex parte Farlow*, when the act was fresh in the minds of the court: and it has been treated as proceeding on a sound distinction in several cases that have followed. In one of these, *Ex parte Gosling*, the applicant had covenanted to yield up the premises, with all fixtures and improvements; upon which, although he was allowed compensation for the loss sustained in respect of goodwill, or the chance of a beneficial renewal of his lease, on the authority of *Ex parte Farlow*, he was held not entitled to any in respect of fixtures or improvements, though it was said the compensation jury might consider them, so far as they added to the chance of a beneficial renewal. In the present case they stand alone, and the applicant is in the same situation as Wright, in respect of his general interest, and Gosling, in respect of his improvements. It may fairly be collected, that the peculiar stipulations which the agreement contains were introduced by Wise, with a view to completing his sale on more favourable terms for himself, by having an estate to dispose of, less incumbered with valuable interest in the tenants. He must be taken, therefore, to have received his compensation from the company in a higher price; and they will have to pay twice over for the same thing, if we were to hold the present applicant entitled. It is probable that, in many cases where the facts left this matter doubtful, they

(*y*) Ante, 226.

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have done so; but we think we ought not to proceed further than the line laid down in *Ex parte Farlow;* and as this is precisely within *Ex parte Wright*, and the distinction taken in *Ex parte Gosling*, and we think those cases rightly decided, the rule will be discharged.

Where, by a statute, compensation was to be paid for land, &c. taken for the purposes of the act, and also for damage, loss, and inconvenience sustained by the owners or occupiers, "such damage to be settled separately from the value of the lands;" and the act also required tenants at will and lessees for years to give up the possession, on notice, but gave such tenants and lessees compensation for the value of their unexpired terms:—*Held*, that a lessee for seven years, who received due notice to quit at the expiration of the lease, was not entitled to receive compensation for the loss of his chance of a renewal, although the lease had been several times renewed by the owner, and the tenant had made improvements on the faith of a further renewal being made.

Rex v. *The Liverpool and Manchester Railway Co.*, (4 *A. & E.* 650; 6 *N. & M.* 186).—Mandamus, requiring the defendants to assess and pay compensation to Messrs. Bathe and Wraith, the lessees of premises taken for the purposes of the railway. The applicants were manufacturers of plaster of Paris, on premises held on lease under one Bromfield, which lease had been renewed several times. The last renewal was for seven years, from February 2, 1828. Bromfield at first agreed to grant a term of 14 years to the applicants, and a lease was engrossed; but he afterwards objected to grant a lease for more than seven years, but at the same time assured the parties, that they would not be turned out at the end of the term; and they, confiding in this assurance, took a renewal for seven years. In the same confidence they expended above £300 upon the premises after the renewal. In 1833, the company contracted with Bromfield for the purchase of his reversion. On the 19th of August, 1834, the company gave the applicants notice to deliver up the premises to them at the expiration of six calendar months, and refused to pay any compensation to them, inasmuch as the lease would expire on the 2nd February, 1835. Wraith, in his affidavit, stated his belief that, if the act had not passed, the premises would not have been sold by Bromfield, and that the lease would have been renewed on advantageous terms. The following sections in the railway act (which passed in 1832) were referred to:—Section 45 enacts, that the owners and occupiers of any lands, &c., may accept and receive satisfaction for the value of such lands, and also compensation for the damages to be sustained in making or completing the said works, and for and on account of the detriment, injury, damage, loss, inconvenience, or prejudice which may be sustained.—By section 47, in ascertaining the sums to be paid for the purchase of any lands, &c., the jury shall also ascertain the compensation to be made for any damages which shall be sustained by any person being owner or occupier of, or interested in such lands, by reason of the severing the same from other lands, &c., belonging to such persons, &c., and for or on account of the detriment, injury, loss, and damage, or prejudice which shall accrue to, or be sustained by, such owner, by reason of the making the said railway, or by reason of the

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execution of any of the powers given to the said company; such damages and compensation to be settled separately from the value of the lands, &c.—By sect. 48, that the said juries shall settle what shares and proportions of the purchase-money or compensation for damages which shall be assessed as aforesaid, shall be allowed to any tenant or other person having a particular estate, term, or interest in the premises, for such his interest therein.—By sect. 56, that every tenant at will, lessee for a year, and other person in possession of lands, &c., not having any greater interest than as tenant at will, or lessee for a year, or from year to year, shall deliver up possession to the company at the expiration of six calendar months next after such notice as is there directed; and in case of a refusal, it shall be lawful for the company to issue their precept to the sheriff to deliver possession.—By sect. 57, that where any such tenant or lessee shall be required to deliver up the possession of any premises so occupied by him before the expiration of the term or interest of such tenant or lessee as aforesaid in the said premises, the said company shall make unto such tenant or lessee, before they shall issue their precept to the sheriff, satisfaction or compensation to the value of his unexpired term or interest in the said premises. Per Lord *Denman*, C. J.—It certainly requires very comprehensive words to include such an interest as this, if interest it be. It is merely a hope of renewal on the old terms, which, if there has been an improvement, were not likely to be granted where there would have been a competition. This is different from the case of a sale, and also from the case under the Hungerford Market Act (*z*), where the words antecedent to "good-will" had exhausted the legal interest. The other judges concurred. Rule discharged.

Reg. v. *The Southampton Railway Company*, (1 *Railway Cases*, 717, *S. C.*, 10 *A. & E.* 3).—Mandamus, requiring the defendants to assess compensation to Messrs. Francis & Sons, for the purchase of their interest in certain premises taken by the company, under 4 & 5 W. 4, c. lxxviii. It appeared that Francis & Sons had been tenants from year to year of the premises in question for nearly twenty years; that their tenancy commenced at Christmas; that they expected to be allowed to continue tenants, and, under such expectations, had expended money in improving the premises. On the 10th of January,

And if a tenant from year to year, who receives a notice requiring him to quit before his term expires, chooses voluntarily to remain on the premises until after his term has expired, he cannot then claim the compensation he would have been entitled to receive, if he had obeyed the first notice.

(*z*) See *Ex parte Farlow*, ante, 224.

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have done so; but we think we ou... to quit at the
the line laid down in *Ex parte Fa...* was also inti-
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...out compensation; they
...ated the landlord's interest in
...hristmas, 1837, possession was re-
... By sect. 47 of the act, it is enacted,
...s for a year, tenants from year to year,
...session of any lands, and who shall have no
...nds than as tenants at will, or lessees for a
...ear to year, shall respectively deliver up the
...ands to the Company, at the expiration of six
...after notice shall have been given (whether
...with reference to the time of the commencement
...ding or not, and whether such notice be given
...nds shall be purchased by the company, or at
...expiration of six calendar months from the giving
...notice, as they shall be respectively required), and
...tenant shall refuse to deliver up such possession as
...be lawful for the company, under their common
...their precept to the sheriff, and require him to give
...of such lands. By sect. 48, that where any such
...shall be required to deliver up possession of any lands
...by him, before the expiration of his term or interest
...company shall make to such tenant, &c., before they shall
...except, satisfaction or compensation for the value of his
...ern or interest in the premises, which satisfaction or com-
...in case of difference, shall be ascertained, &c.

...C. J.—The language of these sections is substanti-
...the same as that in the case of *Rex* v. *The Liverpool and Manchester* ... (*a*), which is a strong authority upon the subject. ... the time of the notice in January, the company had not pur-

Where, by a statute, compensation was to be paid for land, &c. taken for the purposes of the act, and also for damage, loss, and inconvenience sustained by the owners or occupiers, "such damage to be settled separately from the value of the lands;" and the act also required tenants at will and lessees for years to give up the possession, on notice, but gave such tenants and lessees compensation for the value of their unexpired terms: —*Held*, that a lessee for seven years, who received due notice to quit at the expiration of ... lease, was ... titled to ... compensa... the loss ... chance ... renewal, ... the ... seven ... notice ... to ...

Rex v. *The Liverpool and* ... 6 *N. & M.* 186).—Mandam... compensation to Mess... taken for the purpo... turers of plaster of ... which lease had ... seven years, fro... a term of 14 ye... afterwards o... at the same ... out at ti... a rent... above ...

(*a*) 1 A. & E. 450, ante, 230.

...lord's interest, but they did so before they gave ...mises were not wanted till Christmas. Now, if ...ited in July, they would, undoubtedly, have ...mpensation; but as they have chosen to ..., at which time they might have been ... the ordinary landlord's notice, without com... that they are not entitled to anything. On ... it is contended, that the tenancy has never been de... because no regular landlord's notice was given; that the ... of the tenants was materially altered by the six months' ... given in January, and their possession rendered wholly un..., from day to day, after the expiration of those six months. We cannot think that the act requires two notices in the case of a tenancy from year to year; but the true construction is, that the company might either give the ordinary landlord's notice, ending with the current year of tenancy, in which case no compensation would be due, or six months' notice under the act, to be given at any time, in which case the tenant would be entitled to compensation for the value of the term between the expiration of the six months' notice, and the time when a regular landlord's notice would have expired. But in order to entitle the tenant to such compensation, the premises must be given up. If, as in this case, the company inform the tenant that he may hold them till the end of the current year, and he chooses so to do, the situation of the parties is the same as if a regular landlord's notice had been originally given, and the tenant is entitled to no compensation, because he has voluntarily retained the possession. The other judges concurred. Rule discharged.

Rex v. *The London Dock Company*, (5 *A. & E.* 163; *S. C.*, 2 *Har. & Wol.* 267). A mandamus had issued, requiring the defendants to make compensation to one Hartree, and one Lammiman, and a return having been made to the writ, a special case was stated (by consent) for the opinion of the Court. The mandamus recited the stat. 9 G. 4, c. cxvi, which enabled the defendants to improve the docks, and they were empowered to treat for the purchase of such lands, &c. mentioned in a schedule, as should be necessary to execute the works, and if houses were taken under the compulsory powers of the act, tenants for years, or at will, were authorized to require satisfaction for the loss of the goodwill of any trade, and for tenants' fixtures and improvements, and for any other injury or damage which should

A dock act empowered the company to excavate lands, stop up streets, and pull down houses, and provided that any person "having an estate or interest in any house, not less than a tenancy from year to year," who should be injured in his "estate or interest," should be compensated:—*Held*, that the occupier of a public house, the business of which had been lessened by the removal of the

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houses in the neighbourhood, was not entitled to compensation in respect of such an injury.

be sustained in consequence of the execution of the act. The company were also empowered to take down all houses purchased by them, and to stop up, use, or alter all ways which lay within the limits of the lands used under the authority of the act; also to make sluices, bridges, roads, and other requisites, for the more convenient use of the docks. Section 89 was as follows:—Provided always, that if any person having an estate or interest, not less than a tenancy from year to year, in any houses, &c., shall be injured in his said estate or interest, by the making of any such cut, sluice, bridge, road, or other work, every such person shall be compensated by the said company for such injury; and such compensation shall, in case of disagreement, be ascertained by a jury, &c. Hartree and Lammiman were the trustees of the fee simple of a public-house, called the *Wheat Sheaf*, and Lammiman was the occupier and tenant for life. The case set forth the situation of the public-house, and described the various streets and lanes which surrounded it. The defendants purchased a great number of houses and buildings, which they pulled down, and made a new entrance into the docks by means of a cut which passed opposite the Wheat Sheaf. In consequence of these works, the neighbourhood of the public-house became less populous, and the approaches were rendered circuitous, and by these means the profits of the business carried on by Lammiman had been diminished, and the goodwill of the trade or business lessened in value, and the pecuniary value of the premises, either to sell or to let as a public-house or shop, (but not as a private residence), was also lessened. Cur. adv. vult.

Lord *Denman*, C. J.—The question is, have the company, by the making of the cut, &c., injured the complainants in their estate or interest in these premises? In the argument for the affirmative, much stress was not laid upon the loss of neighbourhood; indeed, it is clear that the company, having become the lawful proprietors of the site, had full power to pull down the houses, to keep it uninhabited, or turn it to any use, not a nuisance, which yet might deprive the tradesmen in the vicinity of many advantageous customers. It was conceded, also, that an injury merely to the goodwill of the premises, as a public house, was not, as a substantive injury, within the words of the section; but it was alleged, that the stopping up of any public way, by which the occupier, or his customers, local or casual, had the most convenient and direct communication with his house, and the compelling them to go by a circuitous or less convenient route, was an injury to such occupier in his estate and interest in such house; and, that being

so, the amounts of the usual resort, before and since the act of stopping, might be considered as shewing the quantum of damage sustained. *Wilkes* v. *The Hungerford Market Company* (*b*) was relied on, but it has no bearing on the present case. There the act producing the injury was unauthorised by any statute. Here, the act is in its full extent authorised; and it was impossible to make the basin and cut without destroying the neighbourhood, and stopping up these thoroughfares. This necessary consequence must have been foreseen; and, if it had been intended to give any compensation for it, considering its very large and indefinite extent, it is hardly to be conceived that language should have been used so hypothetical, and so vague in its meaning, as the language of the 89th section would be, if so extended. But the language of the section is apt, and its hypothetical form proper, if we read it as intended to provide for the contingent and unforeseen, but direct injury, which might or might not be occasioned by some positive act of the company, as if by their cut, or bridge, or any other work, they had weakened the foundation, darkened the lights, stopped the drains, or done any similar injury to the houses of any person having an estate or interest not less than a tenancy from year to year, the object of which limitation plainly appears to have been, to exclude the vexatious claims likely to be made by persons having no permanent interest, on account of trifling inconveniences which might be sustained in the progress of the works. We are therefore of opinion that the claim cannot be sustained. —Rule discharged.

Wainwright v. *Ramsden*, (1 *Railway Cases*, 714; 5 *Mee. & W.* 602). —Debt for the use and occupation of premises, held by the defendant for half a year, from 1st April to 1st October, 1838. It appeared that the defendant held the premises of the plaintiff under a yearly tenancy, the rent being payable half-yearly, on the 1st of April and 1st October. The premises being required for the purposes of the Manchester and Leeds Railway Act, (7 W. 4, c. cxi), and being included in the schedule, the company, on the 28th January, 1838, gave the defendant six months' notice to quit. This the company were empowered to do. The defendant quitted at the expiration of the six months; but neglected to claim compensation, although the act entitled him to receive it. Under these circumstances it was contended at the trial of the cause, that the defendant was excused from paying the rent

A tenant from year to year, whose half year's rent was payable on the 1st of October, 1838, quitted the premises on the previous 28th July, in obedience to a notice he received from a railway company, who required the premises, but he neglected to claim compensation, although he was entitled to receive it:—*Held*, that he was liable to pay rent to his land lord up to the 1st of October.

(*b*) 3 Bing. N. C. 281; S. C., 1 Hodges, 287.

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now sought to be recovered, and the jury were of that opinion; but a rule for a new trial having been obtained,—per Lord *Abinger*, C. B. This rule must be absolute. The defendant, for anything that appears to the contrary, might have remained in until October; or, at least, would have been entitled to compensation under the act. It is clear, that, up to July the 28th, the landlord ought to be paid; there has been notice, his name being put on the schedule of the act, which transfers the taking from him to the company.—*Parke*, *Alderson*, and *Rolfe*, Bs., concurred.

Where a company purchased land for a canal, on which the plaintiff had an easement (a right to use a railroad): —*Held*, that the plaintiff could not maintain an action on the case, and that the company might enter on the land without first making compensation to the plaintiff.

Secondly, that compensation was due under the act after actual injury had been sustained.

When a tenant from year to year, who has underlet to another from year to year, cannot claim compensation.

Thicknesse v. *The Lancaster Canal Company*, (4 *M. & W.* 472; 1 *Horn & Hurl*, 365).—Action on the case. A verdict was found for the plaintiff, subject to a special case, which stated, that, by an act 32nd G. 3, a company were authorised to make a canal from K. to W. The act limited no time within which the canal was to be completed; but in 1816 the company had carried their canal to a point, within four miles from the terminus. In 1835, they began to cut beyond that point, and it was this proceeding which gave rise to the present action. The company were empowered by the act to take such lands as should be convenient for the purposes of the act, "making satisfaction to the owners or proprietors of, *or persons interested in, the lands, tenements, &c.*," for any damage they might sustain by the execution of the powers of the act; and in the event of any disagreement between the company and the parties interested, certain commissioners were to settle what sum was to be paid for the absolute purchase; and also what other distinct sum was to be paid for damages sustained by the owners or parties interested in the land. The plaintiff had an easement in a railroad which ran over the land of Sir R. H. Leigh. This land the company purchased from Sir R. H. L., and entered upon it in December, 1834, but they did not remove the plaintiff's railroad, nor did any injury to his right, until February, 1836. The plaintiff gave no notice to the company of his having any interest in this land, and no sum was awarded to him by the company in respect of his interest. The plaintiff was also tenant, from year to year, to Sir R. H. L., at a rent of £80, of other land, which he had underlet, from year to year, to one Atherton for £60; but it did not appear at what time the two tenancies commenced, nor was it stated that the plaintiff had any reversion. In February, 1835, this land was agreed to be sold by Sir R. H. L. to the defendants, and they commenced cutting through it in April following. The plaintiff did not claim any compensation in respect of his interest as tenant from year to year, nor was any distinct sum as

damages awarded to him as a party interested. This action was commenced on the 7th of July, 1836. The question submitted to the court was, whether the plaintiff was entitled to recover upon all or any of the counts in the declaration.

Lord *Abinger*, C. B.—The point is, that the company have taken land, upon which there was a railroad, and that the plaintiff was entitled to damages in respect of this easement, even before any actual injury was sustained. But we think that his claim to compensation must be made at the time of the injury. With regard to the question of tenancy, it does not appear that the plaintiff had such an interest as entitled him to compensation. If a party becomes tenant, from year to year, from Michaelmas, and lets to another, from year to year, from March, at a higher rent than he himself pays, he may perhaps, under such circumstances, have a reversion, for which he would be entitled to compensation. But it is sufficient to say that the present case raises no such question. Our judgment must, therefore, be for the defendants. *Parke*, B.—It is urged, that the company were irregular in entering upon land of Sir R. H. Leigh, without first making compensation to the plaintiff in respect of his right to make a railroad over that land. I do not think, however, that the company were bound, before they entered, to buy up the plaintiff's rights. The sections of the act oblige the company to purchase the interest of the owners in fee or for life, but they do not apply to easements. Parties in the situation of the plaintiff are entitled to compensation for any injury they may sustain, but they are not entitled to compensation prospectively, since the extent of damage cannot be ascertained until after the damage has been actually inflicted. The company may, therefore, enter upon the land before making compensation. The last count is framed on the ground of the plaintiff having a reversion in respect of the tenancy between him and Atherton. The plaintiff's counsel has observed, that the possessor of the term is to be included in any bargain made by the owner with the company; and that, unless that were the case, great injustice might be done to a tenant in possession, under a long term of years. There would be great weight in that observation, if the plaintiff had any reversionary interest here. But it is impossible to say upon this case, that he has any reversion as against a stranger; he may have had some reversion as against his tenant, although that does not appear. But it is unnecessary for us to decide that point.—Judgment for the defendant (*c*).

(*c*) See another point decided in this case, ante, 202.

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Turnpike trustees were authorised to pull down certain houses specified in a local act, "making or tendering satisfaction to the owners or proprietors of such houses:"—*Held*, first, that a lessee for a term of years, as well as the owner in fee of the premises, was entitled to receive compensation.

Secondly, that trespass would not lie, where the trustees pulled down a house, before compensation was tendered; but that the proprietor ought to have proceeded to assess the compensation in the manner provided by the act (*d*).

Lister v. *Lobley*, (7 *A.* & *E.* 124; 6 *Nev.* & *M.* 643). Trespass for destroying the plaintiff's buildings. The defendant justified under the provisions contained in a local turnpike act, 5 W. 4, c. xxxvi. The question turned upon the construction of the act. Sect. 25 empowered the trustees, and they were thereby authorised and empowered and required to make the said road through any lands or hereditaments, &c., and for such purpose it should and might be lawful for the said trustees to enter upon such lands, &c., laid down or described in a map thereinafter mentioned, and also to take or pull down the houses, &c., in the schedule to the act annexed, "making or tendering satisfaction to the owners or proprietors of all private lands, houses, buildings, tenements, and premises, so taken or used for the same, or for any loss or damage they may sustain thereby." On the trial, it appeared that the premises in question were private lands and buildings, comprehended in the schedule mentioned in the act; that the plaintiff held them for a term of years; that the defendants had taken the lands and pulled down the buildings, and had made satisfaction to the owner of the fee simple, which the latter had accepted; but that no compensation had been tendered to the plaintiff. A verdict having been found for the plaintiff, a rule nisi was obtained to set it aside, on the grounds; 1st. That, the plaintiff was not entitled, to receive any compensation; 2nd. That, if he was entitled, he ought to have proceeded, under the statute, to enforce it; and, lastly, that trespass would not lie.

Patteson, J.—I entertain no doubt that the words "owners or proprietors" in this statute include tenants for terms of years, and that such tenants are to receive compensation for "any loss or damage they may sustain." The plain meaning must be, that any person who suffers is to have satisfaction. It has been argued that compensation is to be given to the landlord for all the loss, and that the landlord and tenant are to settle between themselves. I should assent to this, if I could find any clause enabling the tenant to recover in this way; but as there is no such clause, and as it could not have been intended to leave the tenant without remedy, I must infer that the meaning was, that every owner, reddendo singula singulis, should receive satisfaction for his own share.

Lord *Denman*, C. J., said, on a subsequent day.—On the second point, the rule must be made absolute. The amount of compensation

(*d*) See *Fenton* v. *The Trent and Mersey Navigation Co.*, 9 M. & W. 203, ante, 222; *R.* v. *North Midland Railway Co.*, 2 Railway Cases, 1, ante, 195.

cannot, generally, be ascertained till the work is done. The effect of the words in question is, that they shall not do it, without being liable to make compensation.

Williams, J.—Words authorising trustees to enter lands and remove buildings, "making or tendering satisfaction," cannot render them trespassers ab initio, if they omit to make or tender it.—Rule absolute, accordingly.

Where a company purchased land to form a railway, all minerals being reserved to the vendor, and no claim was then made by the vendor for compensation in respect of future damage which might result:—*Held*, that, when the works of an adjoining colliery belonging to the vendor approached the land on which the railway was made, the lessee of the colliery could not claim compensation.

Rex v. *The Leeds and Selby Railway Co.*, (3 *A. & E.* 683; 5 *Nev. & M.* 246).—Mandamus, requiring defendants to assess compensation to be paid to one Bates for the damage sustained by him by reason of the works authorised by the Railway Act, 11 G. 4 & 1 W. 4, c. lix. At the time of the passing of the act, Sir Charles Ibbetson was owner of a coal mine, then under lease to Bates, which would expire in 1852. In 1831 Sir Charles Ibbetson conveyed certain land to the company, the surface of which was above the coal mine, not then reached by the workings of the colliery. No compensation was claimed on his part for the mine, nor for any present or future effect which the railroad might have upon the mine. The company afterwards carried their railroad across this land. In 1834, the workings arrived at the line of the railway, and it was then first discovered that the coal near the line of the railway could not be gotten without injuring the railway; and that the part of the mine beyond the railway must also be worked in a more expensive way. Some damage was, in fact, done by the works of the colliery to the railway, which the company required Bates to repair, under sect. 30; and Bates claimed compensation for the alleged injury sustained by him, in consequence of the interruption of the works of the colliery occasioned by the railway, and also for the expense of repairing the damage done by the colliery works. The company refused to make compensation, and the present application was thereupon made. Sect. 3 of the act empowered the company to use lands necessary for the purposes of the act, they making full compensation in manner thereinafter mentioned. Sect. 18 provided for the alteration by the company of the railways then in use, for the purposes of the colliery working on the lands of Sir Charles Ibbetson. Sect. 30, that nothing shall extend to give to the company any mines or minerals under land purchased by the company, except only so much of such minerals as may be necessary to be dug for the purposes of this act; but all such mines, &c., shall be deemed to be excepted out of the purchase of such land, and may be worked

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by the respective owners or lessees thereof under the said lands, or the railway or other works, as if this act had not passed, so that no damage be thereby done to such railway: Provided nevertheless, that in case any damage shall be done to such railway, the same shall be forthwith repaired at the expense of the owners or lessees of such mines, &c.; and if the same shall not be forthwith done, it shall be lawful for the company to repair, and to recover the expenses attending the same. Sect. 31, "that the respective owners and occupiers of any lands, &c., through which the railway is intended to be made, may accept and receive satisfaction for the value of such lands, or the interest therein by them conveyed, and also compensation for any damage by them sustained, by reason of the execution of any of the works, and also by reason of the severing or dividing such lands, and also for or on account of any damage, loss, or inconvenience which may be sustained by such parties, by reason of the execution of any of the powers of this act, in such gross sums as shall be agreed upon between such owners, &c., and the company." Sect. 32, "that if the persons interested in the lands should not agree with the company as to the amount of such purchase-money, or satisfaction, or other compensation, the said company shall, from time to time, issue their warrant to the sheriff to summon a jury, which jury shall assess the sums to be paid for the purchase of such lands, &c., except for such interests therein as shall have been of right purchased by the company from any other person; and also the separate and distinct sums of money to be paid by way of satisfaction or compensation, either for the damages which shall before that time have been done or sustained as aforesaid, or for the future, temporary, or perpetual, or for any recurring damages which shall have been so done or sustained as aforesaid, and the cause or occasion of which shall have been in part only obviated, removed, or repaired by the company, and which cannot or will not be further obviated, removed, or repaired by them." Sect. 33, "that the jury shall also assess the compensation for any damage sustained by owners or occupiers of, or persons interested in, lands, &c., for or on account of any injury or loss which shall or may accrue to any such person, by reason of the execution of any of the powers of this act."

Lord *Denman*, C. J.—This claim cannot be supported. The act does not contemplate a future inconvenience of the kind which is the subject of this complaint. *Littledale*, J.—I am of the same opinion. The extent of the colliery was capable of being known at the time of the

purchase of the land, and the claim ought then to have been brought forward. The other judges concurred. Rule refused.

4. *Compensation in other Cases.*

A company having given a notice to treat for certain premises—*Held*, that they could not afterwards countermand the notice.

Rex v. *The Hungerford Market Co.*, (4 *Barn. & Ado.* 327; 1 *Nev. & M.* 112).]—Mandamus, requiring the defendants to summon a jury, to assess compensation to E. Davies, for her interest in the "Ship" public-house. The Hungerford Market Act enabled the defendants, within three years, to purchase certain premises mentioned in the schedule; and by section 6 it is enacted, That if any person interested in any premises shall, for twenty-one days next after notice given him of their being required for the purposes of the act, refuse to treat, or not agree, for the sale thereof, in every such case the company shall cause the value of such premises to be inquired of by a jury; and for summoning and returning such jury, they are empowered to issue their warrant to the high bailiff, who is required to impannel a jury. It appeared, that, on the 25th February, 1832, the company gave a written notice, under the 6th section, to the applicant, who was lessee for a term of years of the premises in question, and also to the owner of the freehold, stating that the premises were required for the purposes of the act, and that at the expiration of twenty-one days a precept would in due course be issued. Some negociation then ensued between the company and the solicitors of the owner and occupier of the premises; and in June, 1832, the company having ascertained that the sum demanded for compensation was larger than they expected, they offered to pay the parties all the necessary and reasonable expenses which had been incurred in consequence of the notice, but declined to proceed with the purchase. The applicant alleged, in support of the mandamus, that she had reduced her stock in trade, in consequence of having received the notice, and that the premises had been much lessened in value by the company's works.

Lord *Denman*, C. J.—The company have obtained an act, giving them great privileges in the purchasing of certain property. There is no power reserved to them of countermanding a notice once given, in case of disagreement as to terms, but they may summon a jury to ascertain them; that is their protection, in case of an exorbitant demand. If they are not bound by their notice, it follows that, after giving it, they are free, during the long period of three years (allowed by the fourth section of the act), to take the property or not, at their dis-

cretion, and the owner is at their mercy during that time. I cannot think that the Legislature so intended. The rule must therefore be made absolute, and the company must go to a jury, which is the security they have provided for themselves by this act. *Taunton*, J.—I am of the same opinion. If the notice could be countermanded, the company may state what they consider as a countermand, in their return to the mandamus. Rule absolute.

Where a company gave notice to an owner that his premises would be required for the purposes of an improvement act—*Held*, that the company could not afterwards withdraw the notice; and that it was no answer to allege, that they had no funds applicable for the payment of the compensation.

Rex v. *The Commissioners for improving Market-street, Manchester*, (4 *Barn. & Ado.* 33, n.)]—Mandamus requiring the defendants to assess compensation to one Newall. By the statute 1 & 2 G. 4, c. cxxvi, the commissioners were empowered to purchase certain premises by agreement with the owners, or, if the agreement could not be come to, then by assessment, to be ascertained as in the statute was mentioned. By sect. 27, if part only of any premises were wanted, the commissioners were required to purchase the whole, if the owner was unwilling to sell part. By sect. 31, if the owners of premises should neglect or refuse to treat, or should not agree with the commissioners, the sheriff, on the warrant of the commissioners, was required to summon a jury to assess the damages, and satisfaction to the owners, &c.

It appeared, that, on the 28th November, 1829, the commissioners gave notice to Newall, that a messuage and premises occupied by him were wanted for the purposes of the act; and the notice required him to give up possession on the 29th of November, 1830. Notices were also given to Newall's tenants of other parts of the premises. In 1829 and 1830, negociations took place between Newall and the commissioners respecting the purchase, but they could not agree upon terms; and in December, 1830, Newall gave notice to the commissioners, requiring them to issue their warrant for summoning a jury. This notice not having been complied with, the present application was made. On the part of the commissioners, affidavits were put in, stating that their funds were limited, and subject to the payment of interest on a very large debt, and that they were under a restriction as to borrowing further sums; that they gave the notices merely with a view of being enabled to take any favourable opportunity which might occur for purchasing; but not with any final determination to purchase at all events; that the sum demanded was unreasonable, and that Newall, though he claimed compensation for goodwill, had refused to give any estimate of it; that, if a jury gave

any sum at all approaching that now demanded, it was doubtful if the funds would be adequate for a considerable time; and that the improvement to be effected by taking the premises in question would not, in the judgment of the commissioners, warrant such an expense.

The court ordered a mandamus, and the commissioners, in Easter term, 1831, made their return, in which they repeated the statements above mentioned; they also alleged, that, after the giving the notice, they had been obliged, by a vote of the ley-payers, to make new purchases, by which great expense would be incurred, and that Newall's premises had been bought by him with a full knowledge that they would be required for the purposes of the act; they further stated, that a very small portion of the premises was in fact requisite for those purposes; and that the commissioners did not know that they should ever have funds applicable to the payment of Newall's demands. On a subsequent day, a rule was obtained to quash the return for insufficiency, and, after counsel had been heard on both sides, the court held the return to be insufficient, and ordered a peremptory mandamus to issue.

Stone v. *The Commercial Railway Co.*, (1 *Railway Cases*, 375; 4 *My. & C.* 122).]—Motion for an injunction to restrain the defendants from proceeding on a precept to assess damages, in respect of certain land required for the purposes of the act, and from taking possession of the same. The bill stated, that, previous to 1823, one Richardson was seised in fee of a wharf near to a dock on the Regent's canal, and that, in 1824, a great portion of the premises, three acres in extent, were converted into a yard for bonding timber, in which a business of considerable value was carried on by the plaintiff; that the timber-yard is mentioned in the schedule annexed to the act, as a "timber-yard;" that the plaintiffs had received a notice from the company, which required the plaintiffs, within fourteen days, to treat with the company for the land delineated in a plan accompanying the notice. The bill then stated, that a correspondence had taken place between the plaintiff and the defendants on the subject of the notice, and that. no agreement having been made, the company at length issued a warrant to the sheriff, requiring him to assess the compensation to be paid to the plaintiff; that a plan accompanied the last-mentioned precept, for the purpose of pointing out the portions of the premises in respect of which the jury were to assess the compensation: but that the plan did not correspond with the plan attached to the notice to treat.

1. When a company have given a notice to treat, the relative situation of vendor and purchaser is created between the parties as to the lands mentioned in the notice.

2. The precept requiring the sheriff to assess compensation must describe the lands as they were described in the notice to treat.

Lord Chancellor.—I have no difficulty whatever in saying that the

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company have not done that which the act of Parliament requires them to do. The moment the company have given the notice under the statute, the relative situation of vendor and purchaser is created by that notice. It gives the proprietor a right to insist upon the company taking that, of which they have given notice of their intention to take: a right to be enforced by this court, or by a court of law, by mandamus. The parties not having come to any agreement, the company resort to that power which the act gives them, of issuing a precept, for the purpose of bringing the case before a jury; and the course they adopt is, to abandon for this purpose a large portion of the land comprised in their first notice; and to include in it a considerable portion not included in that first notice. It is admitted, that, so far as it comprises the latter, the company are not in a situation to go before a jury; but if I were to consider this as within the provisions of the act, it would be in the power of the company, having given a notice for any portion of property, to subdivide that into as many proceedings before the sheriff as they might think fit. It is obvious that this would be a total departure from the act: it would be a great inconvenience to those who have to deal with these companies. The company must confine their rights within the limits of the act of Parliament. The case before the jury must be consistent with the precept, and the precept must be consistent with the notice. The result is, that I extend the injunction against proceeding in any manner upon the precept.

A notice to treat for lands ought clearly to shew that a road on the land is intended to be taken for the purposes of the act.

Kemp v. *The London and Brighton Railway Company*, (1 *Railway Cases*, 495).]—Motion for an injunction. It appeared that the railway company gave notice to the plaintiff that the property described, as referred to in the plan to the notice annexed, and therein coloured green, would be taken and used for the purposes of the act, 1 Vict. c. cxix. The parties being unable to agree as to the amount which should be paid as compensation, the matter was referred to a jury, and after they were impannelled the above-mentioned plan was produced, on which there were certain portions of land marked green, and across the part so coloured there was a road marked, the colour of which was white: this represented an ancient roadway, which was bounded on each side by lands belonging to the plaintiff. The jury assessed a certain sum as compensation; and, at a subsequent period, the plaintiff applied for an injunction to restrain the defendants from destroying the ancient roadway above referred to, on the

ground that the act did not authorise them to do so; whereupon the defendants contended that the jury must be taken to have assessed compensation for all damage sustained by the substitution of a new road for the old one.

Lord Chancellor.—What the jury had to do was, to assess the value of the land coloured green, and compensation for damages, which of course means, the damage the other property would sustain by reason of the part coloured green being taken. There is no notice to take anything but what is coloured green. It is quite clear, that, in the plan, the road is not coloured, so as to be included in the purchase: I must therefore suppose, that, for the purpose of estimating the value of the property, the jury had in view what the company themselves submitted to them, namely, a plan marking the road as a right to be preserved. When the jury have before them the plan marking the road, preserving, therefore, the communication,—there being no evidence that anything was laid before the jury on either side for the purpose of intimating to them that they were to value the rest of the property on the supposition that the road was to be taken away,—I must assume that they estimated the damage according to the plan submitted to them; and that they estimated the damages on the supposition that the road was to be preserved.

If a party who demands compensation agrees to waive the usual notice to treat, he cannot afterwards object, that the inquisition does not shew that notice was given.

Reg. v. *The Committee for South Holland Drainage*, (8 *A. & E.* 429; 1 *P. & D.* 79).]—In this case the statute enabled the defendant to summon a jury to assess compensation, if any owner of land neglected or refused to treat for the space of forty days after notice in writing given to the party. A landowner, who was dissatisfied with the verdict given by the jury, applied to the court for a *certiorari* to quash an inquisition, on the ground that no such notice in writing appeared on the face of the inquisition to have been given; and he deposed that he received no such notice in fact. The defendants shewed, in answer, that a negotiation had been going on between them and the landowner, with a view to settle the compensation by agreement; that the landowner refused to accept the sum named, and a discussion ensued between him and the defendants; and, it being then represented to the landowner that the lapse of forty days would carry the time for executing the required works too far into the autumn, the landowner stated, that, as the question must go to a jury, he did not care how soon; and, with his expressed consent, a day was appointed. The clerk then entered in a minute book this memorandum:—"Mr.

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C. refused to accept the sum offered to him, but agreed to dispense with any notice required by the act of Parliament; and it was agreed by all parties that the jury for the ascertainment of the amount of compensation money to be paid, shall be summoned for Wednesday next, at ——, to sit at this place; and the clerk is directed to prepare a warrant to the sheriff accordingly." This memorandum was read audibly in Mr. C.'s presence, and he was cognisant of and assenting to it. The inquisition was accordingly holden; and the landowner attended, addressed the jury, and called witnesses. Under these circumstances, the court said that the party was not competent to make the objection, and refused to grant the *certiorari*: and per *Patteson, J.*—"This case must not be cited to shew that notice, and all things necessary to give authority, need not be on the face of the inquisition. Several cases have been cited to shew that this is requisite; and, for the purpose of the present case, I assume them to be right. But this party cannot take the objection." Rule discharged.

When a tender of compensation must be made before a railway company can enter on lands for a temporary purpose.

Innocent v. *The North Midland Railway Company*, (1 *Railway Cases*, 242)].—This was an application for an injunction to restrain the defendants from entering on certain lands belonging to the plaintiff. The bill stated, that the plaintiff was seised in fee of two meadows in Wessington; and that, on the 21st August, 1838, he received a notice from the defendants stating their intention to take temporary possession of the said meadows, for the purposes of the act; and that, some time afterwards, the plaintiff was informed by an engineer in the employ of the defendants, that the lands were not likely to be wanted; that the plaintiff had no other communication with the defendants, but on the 14th January, 1839, he saw two contractors with the company in the act of measuring out part of the lands; that the plaintiff thereupon remonstrated with the parties, and gave them notice to quit the premises; that afterwards the plaintiff discovered several workmen employed by the defendants carrying away the soil from the lands, for the purpose of making the embankments of the railway. The bill then set out a correspondence between the parties, wherein the plaintiff complained of the trespass on his lands. It was then alleged, that the company had not in any way agreed with the plaintiff for a rent for the land, nor given any security to him for compensation, as required by the act; and charged, that the workmen of the company are now carrying away the soil from the land, and have excavated therein to the depth of five feet; that the

said soil is very valuable; and that the whole substance of such land will be utterly and irreparably ruined and destroyed. The following sections in the Railway Act were referred to in the course of the argument. Sect. 12 enacted, that the company, their agents, &c., are hereby empowered to enter upon the lands of any person, and to survey, &c., and to set out such parts thereof as they are empowered to take or use; and in such lands to bore, dig, cut, embank, and sough; and to remove or lay, and also to use, work, and manufacture any earth, &c., or any other materials which may be obtained therein, or otherwise in the execution of any of the powers of the act, and which may be proper or necessary for making the railway, or which may obstruct the making, &c. thereof: they the said company doing as little damage as may be, and making full satisfaction to all persons, &c. interested in any lands, for all damages to be by them sustained. Sect. 31 enabled proprietors, &c. of lands to receive payment for the value thereof; and also compensation for any damage by severance, and for any damage sustained by the taking thereof. The 32nd section, for settling all differences to arise between the company and persons interested in lands which should be taken, damaged, or injuriously affected, provided for the impanneling of juries, to assess the amount of the purchase-monies and compensation. The 53rd section enabled the company, upon payment of the money agreed upon or awarded for the purchase of any lands, immediately to enter upon such lands, provided that, before such payment, &c., it should not be lawful for the company to enter upon such lands for any of the purposes of the act. Section 54, after reciting that, in making the railway, it might be necessary for the company to take temporary possession of some parts of the lands adjoining to the railway, for the purpose of laying, or depositing and making thereon earth, clay, stones, bricks, slates, timber, lime, and other materials, or of manufacturing such clay into bricks, or for forming temporary roads or approaches to and from the said works, enacted, that, in such cases, the company might enter the lands for the said purposes without first tendering compensation, such compensation being afterwards ascertained in the usual manner.

Vice-Chancellor.—In this case, what the company are doing is not a temporary taking possession, spoken of in the 54th section; neither are they placing themselves in the situation of intended purchasers: but what they are doing is a damage within the meaning of the 12th section, and the other subsequent sections, which speak of damage as contra-distinguished from purchase. Then, passing to the 53rd sec-

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tion, a question arises, whether, upon the true construction of that section, a party who intends to do damage to the land is to be allowed to enter without payment, which, in the case of a purchase, he is not allowed to do; and whether the case of lands to be damaged is or not provided for by this section. If the words of the act are clearly imperative, they must, of necessity, be submitted to; but I consider the more reasonable construction is, to make these words in the proviso to the 53rd section extend, not only to lands to be purchased, but to lands to be damaged or injuriously affected. I do not find any other clause which would at all apply to the right of the company to enter on lands which they do not intend to purchase, but still to damage, before previously paying or tendering compensation. Whatever may be said as to the difficulty of putting a construction on the 53rd section, without an opinion of a court of law on the point, I think the company cannot be permitted injuriously to affect lands, without a previous tender of payment for damages. Injunction granted.

As to what amounts to a receipt of compensation for the loss of communication between several portions of an estate.

Manning v. *The Eastern Counties Railway Company*, (12 *Mee. & W.* 237).]—Trespass for assaulting the plaintiff. At the trial before *Parke*, B., it appeared that the plaintiff occupied a farm in Romford, under the railway company, which was intersected by the railway, and no communication of any kind has been made by the company between the severed portions of the land. The plaintiff insisted that he had therefore a right, under the provisions of the Railway Act, 6 & 7 W. 4, c. cvi, to cross the railway for this purpose; and he having done so, the assault in question was committed by the defendants. The defendants insisted that this right had been taken from the plaintiff, either by his having received compensation from the company, in respect of their not having made such communication, or by the provisions of the general act for the regulation of railways, 3 & 4 Vict. c. 97, s. 16 (*a*). With respect to the compensation alleged to have been received by the plaintiff, the evidence was, that the plaintiff had an unexpired term of eight years in his farm, and that three acres of land had been taken from it for the purposes of the railway. The company and the plaintiff differing as to the price to be paid to him for the land so taken, a jury was summoned for the purpose of assessing it. No documentary proof was given of their verdict, which had never been recorded as directed by the act; but the under-sheriff, be-

(*a*) Post, Appendix, 18.

fore whom the inquisition was held, stated, that the plaintiff was present during the inquiry, and that the jury gave a verdict for the value of the land, 113*l.* 15*s.*, and for severance £250; and a receipt was put in, signed by the plaintiff, as follows :—"Received from the Eastern Counties Railway Co. the sum of 363*l.* 15*s.*, being the amount of compensation money awarded by the jury to be paid to me."

The Eastern Counties Railway Act, 6 & 7 W. 4, c. cvi, s. 28, empowers the owners and occupiers of lands through or upon which the railway was to be made, to agree to receive compensation for damage by them sustained by reason of the severing of such lands, &c., and also for any damage, loss, or inconvenience sustained by them by reason of the taking thereof, &c.; and in case the company and such parties shall not agree as to the amount of such compensation, the same was to be ascertained by the verdict of a jury. Sect. 29, "for settling all differences between the company and the owners and occupiers of any lands taken, used, damaged, or injuriously affected by the execution of any of the powers granted by the act," provides for the summoning of a sheriff's jury, to inquire of, and assess, and give a verdict for the money to be paid for the purchase of such lands, or by way of compensation (inter alia), for or by reason of the severing and dividing the same from other lands. Sect. 111 enacts, that, in every case in which the owners of any lands shall, in their arrangements with the company, have received, or agreed to receive compensation for gates, bridges, &c., or passages, instead of the same being erected by the company, for the purpose of facilitating the passage to or from either side of the lands severed or divided by the railway, it shall not be lawful for such owners, or those claiming under them, to pass or cross the railway from one part to the other part of their lands so severed and divided, otherwise than by a bridge, &c., to be erected at the charge of such owners. Sect. 216 authorises the owners and occupiers of lands through which the railway shall be made, except where the company shall have made proper and convenient communication, to cross the railway as therein mentioned, for the purpose of occupying such lands; and sect. 217 provides, that such right of crossing shall cease so soon as the company shall have constructed a proper bridge or other communication.

The jury found, that the plaintiff preferred his claim from the railway company on the footing that there was to be a total separation of his land without any communication being made, and that he received the payment as such compensation. The question for the opinion of the Court was, whether the verdict of the jury, and the

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receipt given by the plaintiff, was an arrangement between him and the company within the meaning of the 111th sect.

Parke, B.—The only question arises upon the meaning of the 111th section of the act of Parliament. Now, with respect to that question, the first point would be, whether or not, under the 28th and 29th sections, the jury had a right to give compensation, not merely for general injury by severance, but also for the absence of any communication to be made by the company. I have some doubt whether the power of the jury extended to more than giving damages for the general injury sustained by severance; but that will make no difference in the result, in my opinion, as to the mode in which the verdict ought to be entered. Suppose the jury had no power, under the word "severance," to give compensation for a total severance; if that were so, the jury having, in fact, given a verdict for the amount of such compensation, the plaintiff was not entitled to receive it, unless the case did actually fall within the meaning of the term "arrangement" in the 111th section. By the 216th section, which gives the proprietors of lands the power of crossing the railroad, they have a right to pass and repass across such part of the railway as shall be made in or upon their lands, "except in cases in which the company shall, at their own expense, have made proper and convenient communications," from the land on one side of the railway to the land on the other side, "according to any agreement with any owner or occupier thereof, or according to the provisions of this act." The section to which reference is here made in the 216th section is obviously the 111th. Therefore the short question is this, Was there any arrangement with the company by the plaintiff? The term "arrangement" is a very wide and indefinite one. If the plaintiff made a claim for the loss of communication by reason of the company not providing a tunnel from one side of his land to the other, then it seems to me, that either the sheriff's jury had a power, under the 29th section, to give compensation accordingly, and that may be deemed to be an arrangement within the meaning of the act; or, if that is not so, then the case comes to this, that the plaintiff has preferred before the sheriff's jury a claim which he had no right to do, for loss by total severance, and the jury having given compensation for it, he has received it; and that falls within the meaning of the "arrangement" contemplated in the 111th section. I think that section does not, by the term "arrangement," necessarily mean a positive agreement between the company and the party; and, as it is clear that the plaintiff actually made that claim, and has been paid for the want of communi-

cation accordingly, it seems to me that he is now deprived of the right of going across the railway for the occupation of those lands. *Lord Abinger*, C. B., and *Gurney*, and *Rolfe*, Bs., concurred. Rule absolute.

Rex v. *The Commissioners of London Dock Acts*, (12 *East.* 477).]—Mandamus to recover compensation claimed by one Brown. The property in question belonged to one Hodson till her death in June, 1808, and Brown was tenant for life under her will. The West India Docks were opened in 1802, and the London Docks in 1805, and, by the acts, no claim could be made for compensation till three years after the docks had been opened. The claim was resisted, on the ground that, as the docks had been opened three years before Hodson died, the injury was complete in her time, and that the claim, if any, must be made by Hodson's executors, and not by the devisee for life.

Where a party seised in fee of lands was entitled to claim compensation for an injury to the inheritance, and afterwards died, before the compensation was paid, having devised the lands for life, without noticing the claim for compensation —*Held*, that the devisee for life, and not the executor of the deceased, was entitled to receive compensation.

Lord Ellenborough, C. J.—It appears that a chief part of the premises were under lease from the time the dock acts passed till after Hodson died, so that the only claim she could have made must have been purely for the injury to the inheritance; and it is difficult to say, upon legal principles, that, for such an injury, any claim could have been made by an executor. The compensation clauses do not provide in terms for such a case as this, where the owner dies after the three years are completed, without having made any claim; nor can I find any clause or expression in the act which throws light upon the point. It must have been intended, that, in every case where the property was injured, there should be a compensation; and if no claim can be made by Hodson's executors, it seems to follow that the claim by Brown may be supported. He is "owner" at the time he makes the claim; and there is nothing in the acts which expressly, and in terms, confines the claim to persons who were owners either when the acts passed, or within the three years. The right to claim may be considered in this instance, where there is no other person to answer the character of owner, to pass with the land. This is not the case of an owner selling his estate after the three years have elapsed, without expressly selling the right to compensation; for as, in the case put, he sells it in its deteriorated state, he may be considered as reserving the right of claiming compensation; but here Brown answers the character of owner of the deteriorated property, and which had received its damage within the three years, and there is no other person who can claim in opposition to him. Hodson might have made the claim in her own lifetime: she might perhaps have given contingent di-

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rections by her will as to the produce of such claim, if allowed; but as she has not done so, the right must, we think, be considered as passing with the estate. The other judges concurred (*a*).

So, where a party sold his lands before compensation was awarded, and the claim was not noticed in the conveyance:—*Held*, that the purchaser of the lands, and not the vendor, was entitled to receive the compensation.

Rex v. *The Witham Navigation Company*, (3 *B.* & *Ald.* 454).]—Assumpsit to recover £470, awarded for compensation. It appeared that several acts of Parliament authorised the defendants to drain certain low lands on the river Witham. A part of the works directed to be executed under the 37 Geo. 3, consisted of a bank on the Witham; and it was provided, that the directions therein contained for defraying the expenses of making the bank, should not preclude the owners and proprietors of lands at whose expense the banks should be made, their respective heirs or assigns, from being reimbursed the expenses, or such share thereof as the commissioners should allow to have been necessarily expended in making the bank; but that such owners and proprietors, their respective heirs and assigns, should be entitled to be reimbursed the said expenses, out of the monies which at any time thereafter should be raised by the commissioners, under the authority of the act. After the banks, erected under the 37 Geo. 3, had been completed, and the sum of £800 paid by the plaintiff, viz. in the year 1804, the plaintiff sold and conveyed his low lands, in respect of which the said payment was made, without reserving to himself, or taking any notice in the conveyance, of the compensation or reimbursement mentioned in the 37 Geo. 3. Long after such conveyance, viz. in 1817, the commissioners determined that the amount of the reimbursement to be paid in respect of the lands sold by the plaintiff amounted to £470, and had been necessarily expended in making the bank mentioned in the acts. This determination was communicated to the company of proprietors, and payment of the said sum was demanded by the plaintiff. Notice was at the same time given to the proprietors by the persons to whom the plaintiff had so sold the lands, and who continued to be the owners of the same, that they were entitled to receive the same sum, as being the owners of the said lands.

Abbott, C. J.—The question is, whether this money is payable to the plaintiff or to the purchaser? We are of opinion that the plaintiff is not the person entitled to receive this money. The act speaks of the owners and proprietors of the lands, at whose expense the

(*a*) See also *The Midland Counties Railway Company* v. *Oswin*, 3 Railway Cases, 497, post, 253.

bank shall be made, *their respective heirs and assigns*, as the persons, not to be prejudiced by, but entitled to reimbursement of the expense. These words, "heirs and assigns," are apt and proper to denote the persons in whom the lands might happen to be vested at the time of the reimbursement made, by descent or conveyance, by act in law or by act in deed; and seem to import, that the repayment of the expense should attach upon the land, and that the land, which undoubtedly was made subject to, or debtor for, the charge, should be creditor for the repayment; and that the commissioners should not be required to examine into titles and conveyances, but should make their repayment to the person who should appear as owner of the land at the time of the repayment.—The other judges concurred.

Where lands have been agreed to be sold before the testator's death—*Held*, that the purchase-money belonged to his personal representatives.

The Midland Counties Railway Company v. *Oswin*, (3 *Railway Cases*, 505, note (*a*).]—One H. Hawkins contracted to sell certain freehold property to the corporation of London under the London Bridge Improvement Act, but died before the conveyance was executed. The company took possession, and after Mr. H.'s death paid the purchase-money into the bank. The question was, whether the money belonged to the real or personal representative of Hawkins, and the Vice-Chancellor of England held that it went to the latter.

When compensation is assessed under a statute which requires the jury to ascertain the compensation to be paid for lands, and in respect of other damage separately, it is the duty of the company, and not of the claimant, to see that the verdict and judgment is properly drawn up.

Semble, that if, in consequence of the above distinction not having been made, it is impossible to ascertain the ad-valorem stamp-duty which is applicable to the conveyance of the land, the stamp-duty should be paid on the whole amount awarded for compensation.

In re The London and Greenwich Railway Company, (2 *A. & E.* 678; *S. C.*, 1 *Har. & Wol.* 81; 4 *Nev. & Man.* 450.)]—Mandamus, on the application of the directors of the railway company, requiring the sheriff of Surrey to ascertain the sum of money to be paid for the leasehold estate of one Keeton, and also for compensation for loss, damage, or injury for improvements, or in any other manner whatsoever. The company was incorporated by stat. 3 & 4 Will. 4, c. xlvi; and sect. 50 enacts, that upon disagreement the company shall issue a warrant to the sheriff to impannel a jury; which jury shall "inquire of, and ascertain, and give a verdict for the sum of money to be paid for the purchase of such lands," &c., "and also the sum of money to be paid by way of satisfaction or compensation, either for the damages, which shall before that time have been sustained, or by reason of the severing the same from other lands," &c., "or for the future temporary or perpetual, or for any recurring damages," &c., "and for damage, loss, or injury as aforesaid." Sect. 51 enacts, "that in ascertaining the money to be paid for the purchase of any lands" &c. "and the satisfaction to be made for any damages which

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may be sustained by the persons interested in such lands," &c., "such satisfaction for damages shall be settled and ascertained separately and distinctly from the value of the lands." Sect. 58 enacts, "that, upon payment of such sums of money as shall have been awarded as the purchase-money for any lands, &c., or as a satisfaction for any damages, as before-mentioned, to the respective proprietors of such lands, &c., or if the party should refuse to execute the necessary conveyance, then, upon payment of such money into the Bank of England, it shall be lawful for the company forthwith to take possession of such lands, &c., and to make and construct the works by this act authorised, and such lands shall thenceforth be vested in the company." Keeton being applied to for a portion of his land, (part of which he held from year to year, and part for the residue of a term), demanded that the company should take the whole; and a price not being agreed upon, the company issued their warrant calling upon the sheriff to summon a jury to ascertain the sum to be paid in respect of the lands, and also for compensation. Evidence was given before the jury, on Keeton's part, for the purpose, as the company now alleged, of shewing both the value of the lease and the loss or damage the claimant would sustain by the premises being taken; but, on Keeton's part, it was represented that the evidence bore upon the latter point only. The company called no witnesses. The price of the fixtures had been previously agreed upon. No specific claim was made in respect of the leasehold interest, nor did Keeton, or the company, demand that that, or any other part of Keeton's interest in the land, should be separately valued. The jury gave a verdict of 15,202*l.* 9*s.* 6*d.*, and the sheriff made an indorsement on the warrant as follows:

"Verdict . . .	£15,000	0	0
For fixtures . .	202	9	6
	£15,202	9	6"

The company conceived this verdict to be a nullity, inasmuch as it did not ascertain the compensation for damages separately from the value of the lands; and they issued a second warrant to the sheriff, which he refused to obey. Keeton's agent, on being informed of the difficulty respecting the verdict, alleged that the jury had awarded the whole sum as compensation, and nothing for the lease. It was now urged that, as the verdict did not state what sum was assessed in respect of the leasehold interest to be purchased, it would be impossible, in an assignment of that interest, to give a true statement of

the consideration money, for the purpose of fixing the ad-valorem duty; and consequently that such assignment to the company would be invalid.

Per Curiam.—Was it not the duty of the railway company to object before the sheriff's assessor, if they were dissatisfied with the finding of the jury; and can they now call upon this court to interfere so as to put the verdict already obtained by the claimant in jeopardy? It does not appear that any claim was distinctly made for the leasehold interest. The whole difficulty, as regards the company not being able to make a good title on account of the stamp duty, will be obviated by reciting all the circumstances in the assignment, and affixing to it a stamp adapted to the whole sum given by the jury. Ultimately, the rule was refused, upon the understanding that such an arrangement should take place; the claimant agreeing to pay the stamp duty appropriate to the whole sum given.

Rex v. *The Justices of York*, (1 *A. & E.* 828; 3 *N. & M.* 625).]—Mandamus, requiring defendants to allow the costs and expenses incurred by Matthew Gawthorp, about an inquest holden for assessing damages, under stat. 3 & 4 Will. 4, c. lxii, being an act for improving the city of York. It appeared by the affidavits that the trustees under the act, requiring a messuage belonging to Gawthorp, offered him £680 for the purchase, which offer he declined; and a jury subsequently assessed the damages at £720. Gawthorp's attorney then made out a bill, as in the case of a common trial, containing charges for attendances, brief, &c., and there was also an item as follows:—"Paid witnesses for their attendance and loss of time in surveying, measuring, and valuing the property in question, and in attending as witnesses at the inquest." Application was made to the defendants to allow the above costs; but the defendants, conceiving that the statute did not authorise the allowance of such costs, refused the application. The statute contained the usual powers, enabling the trustees to take property, and for assessing compensation; and, by sect. 31, in case any such jury shall give a verdict for more money for compensation, &c., than shall have been offered by the trustees before the summoning of such jury, "then the costs and expenses of such notice, precept, and of summoning and returning such jury and witnesses, *and also of the said inquest*, (such costs and expenses to be settled and allowed by any justice, &c.), shall be paid by the trustees out of the money arising by virtue of this act, and shall be recovered by the

Where a statute directed, that, in certain cases, a party who succeeded in obtaining compensation before a jury "should be entitled to recover the costs and expenses of such notice, precept, and of summoning and returning such jury and witnesses, and also of the inquest"—*Held*, that this included charges for the attornies' attendance, and for briefs, witnesses, and the like, as in an ordinary trial, but not the expense of surveyors, who were not witnesses examined at the inquest.

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person entitled thereto by distress," &c.; but if any such jury shall give a verdict for no more or for less than shall have been offered, as aforesaid, by the trustees, "then one moiety of the costs and expenses aforesaid shall be borne and paid by each party," &c.

Lord *Denman*, C. J.—The statute should be liberally construed, and the trustees should pay this price for the great power which is given to them. The words are, "also of the said inquest," which must mean something besides that denoted by the preceding words, and I cannot draw any line. I think they must mean all costs whatsoever. It is like the case of a trial, where one party obtains a verdict. There are certainly later parts in this section which appear to be rather inconsistent with the earlier part; but I do not think that we are bound to reconcile them: and, at any rate, they have no distinct bearing upon the present question. The costs, therefore, of the brief and witnesses are to be allowed, but not the costs of surveyors. *Taunton*, J.—With respect to the costs of surveyors, I should pause before saying that costs are to be allowed for them, quâ surveyors; but if they have been witnesses, they will be on the same footing as others. *Littledale* and *Williams*, Js., concurred. Rule absolute.

But where, in a similar case, the statute directed, that a party should be entitled to receive all the costs of summoning such jury, and the expenses of witnesses—*Held*, that the party was not entitled to the general costs of the inquiry.

Rex v. *Gardner*, (6 *Ad. & E.* 112; 1 *Nev. & P.* 308).]—Mandamus, on the application of Mr. Norreys, requiring the coroner to review his taxation of a bill of costs in respect of an inquisition taken before him under 4 & 5 W. 4, c. xxv, an act relating to the Wigan and Preston Railway. By sect. 66, the sheriff or coroner was directed to summon a jury to assess compensation in case of disagreement respecting the sum to be paid for compensation: "Provided always, that, in such inquiry, the person claiming compensation shall always be deemed to be plaintiff, and entitled to the same rights and privileges as plaintiffs in actions at law are entitled to." Sect. 71 enacts, that, if the jury should give a larger sum than the company had previously offered them, "all the costs of summoning such jury, and the expenses of witnesses, shall be defrayed by the company, and such costs and expenses shall be settled and determined by the said sheriff," &c.; but, if the verdict shall be for the same or a less sum, one moiety of the said "costs and expenses" shall be paid by the party disputing with the company, and the remainder by them. Sect. 72 enacts, that all parties with whom the company shall have any dispute, shall enter into a bond to prosecute their complaint, "and to bear and pay their proportion of the costs and expenses of summoning and returning such jury,

and of the summoning and attendance of witnesses, in case any part of such costs and expenses shall fall upon them."

The facts were as follows:—The company gave notice to Norreys that they required certain of his lands; but the parties did not agree as to price. A jury was summoned before the coroner to assess compensation, and the value of the land was assessed at 3062*l.*, and the compensation for damage at 937*l.* The solicitors employed by Norreys made out their bill of costs respecting the negotiations for the purchase, and also of the inquisition, including the charge of surveyors and valuers employed by Norreys for valuing the premises, and for their attendance at Preston as witnesses on the inquisition, the costs of drawing the brief, counsel's fee, and the solicitors' charges for attendance. The coroner, in taxing the bill, allowed the surveyors' travelling expenses, and a certain amount per day for their loss of time in viewing and in attending the inquisition. He also allowed the expenses of the other witnesses, some charges for summonses to them, and his own expenses; but he disallowed all the further articles of demand above specified. Lord *Denman*, C. J.—I feel no difficulty in saying, that, if there were any words to warrant it, I should not scruple to give these clauses the largest sense that has been contended for. It is extremely unjust that no provision should have been made for the general costs in a case like this; but if the statute has not made it, we cannot supply the defect (*f*). Sections 71 and 72 evidently fall short of what is demanded; and, therefore, we must, though with regret, say, that the mandamus cannot go. In *Rex* v. *The Justices of York* (*g*), we did not strain the words of the local act. That provided for the costs, not only of notices and precepts, and summoning and returning the jury and witnesses, but "also of the said inquest," which words included the trial and the expenses incurred upon it. The words in sect. 66, that a party claiming compensation shall be "deemed to be plaintiff, and entitled to the same rights and privileges as plaintiffs in actions at law," were clearly intended, not for the purpose which has been attributed to them, but to regulate the general course of proceedings, to remove doubts concerning the right to begin, and to shew, in other respects, how the inquisition should be conducted. *Littledale*, *Williams*, and *Coleridge*, Js., concurred. Rule discharged.

(*f*) See now 8 Vict. c. 18, s. 52, post, App. 128.

(*g*) 1 A. & E. 828; ante, 255.

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Same decision as in *R.* v. *Gardner*, ante, 256.

Reg. v. *The Sheriff of Warwickshire*, (2 *Railway Cases*, 661).]—Mandamus requiring the sheriff of Warwick to review the taxation of the costs of an inquisition held before him, under 4 Will. 4, c. xiv, for the purpose of assessing compensation to W. Parkes, in respect of land belonging to him, which had been taken for the purposes of the act by the Birmingham and Gloucester Railway Company. It appeared that Parkes was the owner of certain lands taken by the company for the purposes of their act. Parkes having complained of the injury thereby done to his property, the usual precept was issued for ascertaining the damages, and the jury assessed them at 520*l*. The sheriff subsequently taxed the costs under the 83rd section of the act; and he allowed, amongst other items, for attendances and letters of the plaintiff's attorney, and twelve guineas each for the surveyors, (who attended one day, but were not called as witnesses), amounting altogether to 78*l*. 6*s*. It was now contended, on behalf of the company, that the sheriff had no power to allow these items. The following clauses in the statute were referred to:—Sect. 78 directs the sheriff to impannel a jury in cases of disagreement as to the amount of compensation which ought to be paid by the company: "Provided always, that, in such inquiry, the person claming compensation shall be plaintiff, and shall have all such rights and privileges as plaintiffs in actions at law are entitled to." Sect. 83 enacts, "that, in every case in which a verdict shall be given for a greater sum than shall have been previously offered by the company, all the costs of summoning such jury, and the expenses of witnesses, and of the bond to be entered into as after mentioned, shall be defrayed by the company, and such costs and expenses shall be settled and determined by the said sheriff," &c.; "but if the verdict shall be given for a less sum than shall have been previously offered by the company, one moiety of the said costs and expenses shall be paid by the party with whom the company shall have such dispute, and the remainder by the company," &c. Sect. 84 enacts, "that all parties who shall require a jury to be summoned as aforesaid shall enter into a bond to prosecute their complaint, and pay their proportion of the costs and expenses of summoning and returning such jury, and taking such verdict, and of the summoning and attendance of witnesses, in case any part of such costs and expenses shall fall upon them. *Williams*, J.—It might, perhaps, be successfully contended, that the larger words of the 84th section are, to a certain degree, to be considered as

extending the language of the preceding section; but, admitting that such should be deemed an extension of the other sections, it seems to me impossible to carry it to the extent contended for in the argument. In this bill are considerable charges for payments made to surveyors, who have been instructed, I presume, to make plans, or something useful for the purposes of the investigation, as those parties do not appear to have been called as witnesses; nor is it pretended that they received this charge *quâ* witnesses, but simply in the character of surveyors, which is not at all within the meaning of the act, nor within the language, most certainly, of the larger and more extended clause. The case of *Rex* v. *Gardner* (*h*) plainly shews, that, though the judges were anxious, if possible, to travel out of the express words of the act, they felt themselves bound by them; and we must act in the same manner. *Coleridge*, J.—If there had been any words like those in *Rex* v. *The Justices of the City of York* (*i*), those words would have relieved the case from all difficulty; and we might have adopted the view urged upon us, as the words "costs of the inquest" would have been, in common understanding, the costs of the inquiry, and that would have let in the general expenses, as in an ordinary case; but there are no such words here. It appears to me, that the case of *Rex* v. *Gardner* is conclusive. But even if that case had never existed, we have merely to deal here, not with the hardship or injustice of the case; but the simple question is, whether the charges here allowed can fairly come within the words of those sections? It seems to me quite impossible that they can, even taking them as suggested, and which is giving the utmost benefit to the applicant, that is, taking the words of the 84th section to be the governing words, and not the more limited words in the 83rd section. *Wightman*, J., concurred. Rule absolute.

(*h*) 6 A. & E. 112; ante, 256. (*i*) 1 A. & E. 828; ante. 255.

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Same decision as in *R.* v. *Gardner*, ante, 256.

Reg. v. *The Sheriff of Warw...*
damus requiring the sheriff ...
costs of an inquisition held ... *before the Lords' Select*
purpose of assessing comm... *of assessing Compensation for*
belonging to him, which ...
by the Birmingham ...
that Parkes was th...
the purposes of ... 1845, the House of Lords ap-
thereby done ... committee to take into consideration the
taining the ... expediency of establishing some prin-
subsequently ... to be made to the owners of real pro-
he allowed ... &c. may be compulsorily taken for
plaintiff ... public railways; and also further to
at... the question of severance, and that
... ...ances: and to report to the House. The
... was made to the House:—

... have met, and taken into consideration the ... referred to them. They have summoned witnesses, ... of great practical experience in the dealings ... railway companies and the landed proprietors. In the ... witnesses, but more especially in those of Mr. ... of the Eastern Counties Railway Company, and of ... land valuer in Kent, will be found ample illustrations ... the transactions between the parties.

... questions of severance and damage, however, the Com... opinion that it is impossible to establish any fixed rate ... which the damage arising from severance, and other injuries to ... be assessed and compensated.

... respect to the land, &c. actually taken, the witnesses who ... examined state, that, to the marketable value of the property ... they add, in their valuations, a percentage, on the ground of ... being compulsory. The amount of this percentage varies ... the views of the different witnesses, whose evidence will be ... in the Appendix; but the Committee are of opinion that a ... high percentage, amounting to not less than 50*l.* per cent. upon ... value, ought to be given in compensation for the com... to which the seller is bound to submit, the severance

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and the damage being distinct considerations. In some of the evidence, especially of Mr. Duncan, (post, 263), it appears to the Committee that a very unfair view is taken of the injury done to proprietors, and of the compensation due to them.

The Committee are of opinion that many cases occur in which it is necessary to consider the land, &c., not merely as a source of income, but as the subject of expensive embellishment, and subservient to the enjoyment and recreation of the proprietor.

Public advantage may require all these private considerations to be sacrificed; but as it is the only ground upon which a man can justly be deprived of his property and enjoyments, so, in the case of railways, though the public may be considered ultimately the gainers, the immediate motive to their construction is the interest of the speculators, who have no right to complain of being obliged to purchase, at a somewhat high rate, the means of carrying on their speculation.

It is also to be observed, that the price of the land purchased, and the compensation for that which is injured, form together but a small proportion of the sum required for the construction of a railway, so that no apprehension need be entertained of discouraging their formation, by calling upon the speculators to pay largely for the rights which they acquire over the property of others.

In the course of the Committee's deliberations, the question of injury to mineral property by the construction of railways over it, was very forcibly brought before them; and they are of opinion, that (notwithstanding the improvement in the law relating thereto made in the present session) it is one which requires still further consideration; but, as they did not deem it to have been within the original scope of their appointment, they do not think it advisable to make any allusion to it in their report, beyond recommending it most strongly to the attention of the House.

The Committee are also of opinion—

1. That, before any road, or canal, or railway, or dock bill shall be read a first time, there be laid on the table of this House a statement of the length and breadth of the space which is intended or sought to be taken for the proposed works, and to give up which the consent of the owners of the land has not been obtained; together with the names of such owners, and the heights above the surface of all proposed works on the ground of each owner.
2. That a return shall also be presented at the same time of the

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names of the owners or occupiers of any houses situated within three hundred yards of the proposed works, who shall have, before the 31st December preceding the introduction of the bill into Parliament, deposited written objections to the said railway with the public officer appointed to receive the plans of the said railway within the parish or township in which their property is situate; or, if the railway should not be proposed to be carried through that township, in the one through which the railway is to pass in the manner objected to by the above-mentioned parties.

3. That, where any party or parties have appeared and contested any such bills at the bar or in the committees of the House, it shall be lawful for the House or committees, if, in their discretion, they shall think fit, to direct the costs in whole or in part of such party or parties to be paid by the opposite party promoting the bill (*i*).

And the Committee have directed the minutes of evidence taken before them to be laid before your Lordships.

The following are extracts from these Minutes:—

29*th May*, 1845.—*The* EARL FITZWILLIAM *in the Chair.*

Mr. *Charles Parker* examined:—

You are the law agent of the London and Birmingham Railway Company?—I am.

Have you any information to give to the Committee respecting the rate at which land has been purchased by that company for the purpose of constructing the railway?—I can give the Committee general information; but I only heard late last night of the appointment here. There are tables being made out of the average price that has been paid for land upon the line; but I can answer any questions and give any general information upon the subject.

Can you give generally any information to the Committee as to the number of years' purchase at which the land was purchased, keeping that question entirely distinct from the question of severance and damage?—I think it is hardly possible to give that information through the line. Generally speaking, those agreements are made in

(*i*) Parliament has not as yet adopted either of the above recommendations of the Committee.

one gross sum; they are sometimes divided afterwards, but not by any means generally. Generally speaking, the compensation and the price of the land are mixed up together.

Have you any idea of what is the proportion between the severance damage and the value of the land?—That varies in almost every case. If you take the line at the side of a field the damage is very inconsiderable, compared with going right through the middle of it; and the same with buildings. That makes a great variation in the compensation.

Have you ever built any farm buildings, in consequence of your going so near the old ones as to make them inconvenient?—We have frequently allowed money for it.

You have never done it yourselves?—No. I think that it is always better done, and cheaper done, and more satisfactorily done, by the parties themselves; but I have had the buildings accurately valued, and then gone to the parties, and said, "That is the sum we are told it will cost; if you like to take that sum, and lay it out yourself, we will pay you;" and I have found that generally preferred,—I may say universally.

Although you cannot state how much is paid for severance, can you state about what proportion of the total price severance forms?—I think about half. It varies very much; but if you took the average of all compensations, I think it would come out at about half. I think that where 2000*l.* is paid to a landed proprietor, in the generality of cases about 1000*l.* is for the land, and 1000*l.* for the compensation. Of course, in many cases, where there is no severance, we do not expect to pay at the same rate, but we always pay a great deal more than the market value; that is conceded on all hands.

The severance made in the case of a house, or of a gentleman's park, would be infinitely greater than the severance in going over a field where a flock of sheep are kept?—Yes.

But you would pay a severance for the field?—Yes; we always pay an additional sum, either in the price of the land, or professedly for severance, in all cases.

Mr. *John Duncan* examined:—

You are solicitor to the Eastern Counties Railway?—I am.

Can you state the number of years' purchase which has been given by the company for the land required for the construction of the railway?—It has depended on circumstances. It has generally been thirty to thirty-five years' purchase, after getting at the net

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rent; but the question of compensation or severance, of course, varies in every case, according to the extent of damage done.

Do you think that you could inform the Committee, by referring to documents in your possession, about the number of years' purchase which has been paid for land absolutely taken, as distinct from the questions of severance and damage?—I have no doubt of that.

Can you state the maximum and minimum which has been given with reference to compensation and severance?—No; there is certainly neither maximum nor minimum as guiding rules.

With reference to the value of the land, what has practically been the rule you have acted upon?—With reference to the value of the land, I know that the general rule we take in the country is to get as nearly as possible at the net rent paid, or the net letting value, and, having got that, to give a certain number of years' purchase for the compulsory sale.

How many years' purchase?—I have said thirty to thirty-five.

Then afterwards you add to that what will be required for compensation?—Yes. In towns it is different. Where we go through property in towns, we do not give the same number of years' purchase for buildings as for land.

How many years' purchase do you give for buildings; for houses, barns, and so forth?—That differs very much, according to the class of houses: it runs between twenty years and twenty-six years.

Do you pay for annoyance besides?—We pay for annoyance besides, where the party has property left beyond what we take. But where we take a particular owner's house, and he has no other house in the neighbourhood, we simply pay him the value of that house so purchased compulsorily: we give him more than the market value of it, because we have compelled him to sell it to us for our objects.

Was the dissentient party generally satisfied at last?—I should say certainly. They had only to employ an intelligent surveyor, and obtain satisfactory settlement through his means. There is no doubt that surveyors, from the practice of the last ten years in railway matters, have become so conversant with every species of damage done by railways, and injuries done to landowners, that, if a landowner chooses an intelligent surveyor, he is sure to get his case protected. The surveyor goes upon the land, and he does not look merely at the land taken, but he looks deeply into present and future injury, and far off at every species of practical damage that may occur, and makes out the claim of the landowner; and then the surveyor of the company either consents to each item of claim, or

disputes it; and they ultimately agree upon the full amount to be paid: and all that is to be done by the company for the landowner.

However destructive to the comfort and happiness of an individual it may be to have a railway pass rather close to him, unless it goes over land that belongs to him, he has no kind of claim?—I think it is so. I know that a case has occurred under our railway acts of Parliament where damage was done to an adjoining owner; but he was not actually on the line; he was not in the book of reference. We had nothing to pay him for going over his land; we simply passed by him; and, in making a bridge approach, the road in front of his house was much raised, and we put him to positive inconvenience. I remember this case where the road was thus raised in front of a gentleman's house:—He used to go from his garden to the road upon a level, but after this alteration he had to come out of his garden-gate, and walk up three or four steps to reach the road. He was not an owner upon the line, and he contended unsuccessfully before arbitrators that the company were bound to pay him compensation. But I know that since that case the courts of law have construed the railway acts so that any person placed in a similar position is entitled to compensation, and that he can go to a jury to settle what the compensation to be paid him should be (*a*). But if a gentleman's house is merely injured by the noise, or in respect of the sight of the railway, in matters of that kind I doubt very much indeed whether the act of Parliament would give compensation to such a party: you must have something more close in point of injury than that as to groundwork for compensation. In the case I have mentioned the raised road was quite close to the person's dwelling, and was an evident and palpable mischief to him; but in the case of the sight of the railway, or the noise of the railway trains or engine, or matters of that kind, those injuries are too far off from compensation for the acts of Parliament to reach them; at least I apprehend so. I apprehend, that, unless the owner of a house situated in the position of being annoyed by the sight or noise was an owner upon the line, he would not be able to recover compensation.

You have as good a right to erect an embankment opposite a person's house, upon land which belongs to you, as any other owner would have to erect a house there?—Yes, for the public object sanctioned by act of Parliament.

(*a*) See ante, 213.

... six and twenty years' purchase for ... house and premises, are any additions ... annoyance of removing?—Yes; we always as- ... destroyed.

... the annoyance of a person being compelled ...?—That is covered by the number of years' ... higher rate than the market value, to cover ... and the annoyance of moving.

... that the average rate was twenty to twenty-six ... is that a rate which you consider higher than ...?—Certainly it is, upon our line, where property is ... indeed.

... you consider the average market price?—It depends ... of property. I am speaking of houses in London; ... Shoreditch and Spitalfields, and thereabouts.

... state how many years, in addition to what you consider ... price, you are in the habit of giving for house property? ... that, to cover the compulsory sale and annoyance, and so ... something like five or six years' purchase is added to the actual ... value of the house.

... the market value, according to that rate, would be about ... to twenty years' purchase?—It depends upon the property ... railway goes through. In the property which the Eastern Coun- ... Railway goes through at Shoreditch the houses are of a very ... description, and in those cases the property is not worth above ... or fifteen years' purchase.

And it depends also upon the state of repair of the property?—Certainly.

Do you think, that, upon the average, the houses of the workmen in Spitalfields are not worth more than from fifteen to eighteen years' purchase?—I am not competent to give an opinion on that point.

In the case of large houses in the country, that certainly would not describe their value?—It would not. It depends upon the class of tenants, and whether there is a lease. There are a great many details which must be looked at in the valuation of a house. If the house has not had a tenant for three or four years, you cannot get the same for it as you can if a tenant has a lease of it for fourteen years, who is a responsible tenant.

Besides which, is not it the fact that a large country house never

pays a rent equal to its cost? For example, suppose a house cost 10,000*l.*, it would not let for above 200*l.* a year in the country?—Very likely not.

Therefore thirty years' purchase upon such a rent as that would be a very inadequate sum to pay?—There is no doubt, that, if a railway company takes a house that has cost 10,000*l.*, they do not pay 10,000*l.* for it; they only pay what could be got for it, what it would sell for, together with the additional compensation for taking it compulsorily.

But supposing you turn the proprietor out of his house?—Parliament does it.

Ought you not to pay him for it?—We do compensate him to the full extent of its value, and a good deal more. If he wants to preserve his house, and to prevent its being taken for a public work, he must go to Parliament, and beg their protection for his house. Parliament gives the company leave to go through it, on paying what it is worth.

Then his only way of protecting himself is to get the bill thrown out?—To get the bill thrown out, or to make the company deviate.

He may be quite certain that you will not pay the full value of the house?—We will not pay what it cost. There would be no end to that; we might pay the most fanciful prices.

Supposing a person had spent 10,000*l.* upon building a house, and he had not been able to live in it since he had built it, but that he had let it to a tenant, and he had not been able to get for it, at the end of five or six or ten years since it had been built, more than 100*l.*, 200*l.*, or 300*l.* a year, should you compensate him upon the principle of taking the value of the property at what it had cost him, namely, 10,000*l.*, or should you compensate him upon the principle of taking the value of the property at the sum it let for, whether it was 100*l.*, 200*l.*, or 300*l.* a year?—There is no doubt that we should take it upon the latter principle, adding anything to the price that we thought ought to be paid; and if we are in error there is a tribunal to appeal to, namely a jury, to settle whether he is right, or whether the company be right. The jury give him as much as they think fit, and we are obliged to pay what the jury award. If, upon the evidence given, they choose not to adopt our valuation, but instead that of the house owner, we are obliged to submit to the verdict; but he is obliged to submit to it if the jury take the company's view.

In a case where a railway goes in front of an old ruin, for instance,

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Gervoise Abbey, or Bolton Abbey, or any other well known abbey, and goes near it, so as to spoil entirely the picturesque effect of the abbey, on what principle do you compute your compensation?—I am not aware of any such case; but I rather think the company would be advised, and that they would consider that the public utility must prevail, and that they should pay nothing for any loss of beauty, or anything else. If a company went through the grounds of the proprietor to whom the abbey belonged, or if they went so near the ruin as to prevent the erection of a house on the same spot if that was contemplated, if the course of the line would touch his pocket injuriously, we should have to pay for that; but I think that for the mere destruction of an object of beauty or interest we should not have to pay anything. If a party went before a jury, and there was any claim set up of that kind, we should fight it very resolutely.

On the ground that the party was entitled to no compensation for injury to a ruin?—Yes; that it could be no injury to his pocket, and therefore, he had nothing to receive.

However hallowed the ruin might be in his estimation?—That is so. He must come to Parliament, and pray of Parliament not to grant a bill for a railway to run near so beloved a place. But if it was a beautiful spot, he should get a station made near it, and turn it into building land.

Mr. *John Clutton* examined:—

Are you one of the solicitors of the South-eastern Railway Company?—I am land agent of the South-eastern Railway Company.

Can you give any information to the Committee respecting the price which has been paid for the land taken by that railway company, including the price of the land, compensation for severance and other damages?—Each case has depended upon its own merits entirely; I think the total sum is about £600,000.

For how many miles of railway is that?—They have on the whole about 120 miles, including works in course of construction.

That is, upon the average, 6000*l.* a mile?—Yes.

Does that include a great deal of house property?—It includes the Bricklayers' Arms branch and the Dover terminus. I think those are the largest portions of house property taken by the Dover Railway. The London terminus is the joint terminus of the three companies, the Dover, the Croydon, and the Brighton.

Then 6000*l.* a mile would be considerably larger than what may

be considered as having been paid for land?—Yes; I should state that about 3000*l.* a mile would be the average upon the Dover Railway, including the branches, for land simply.

How many acres a mile?—It varies so much. On many of the branch lines it has not exceeded ten acres a mile. Upon the main line, where the works are much heavier, I suppose the quantity has been at least fourteen to fifteen acres a mile. I am merely giving opinions now; I have not gone into the figures precisely.

Can you give to the Committee more detailed and accurate information?—If your Lordships desire it. I am now purchasing land for the Dover Railway Company, which would cost, I suppose, about 3000*l.* a mile.

That is mere land?—Nearly so.

That comprises both the severance and compensation?—Yes; that is upon the Canterbury and Ramsgate and Margate branch. I can give accurate information as to those two branches, because they are more particularly in my recollection.

In some part of the Dover Railway is not the quantity taken less than ten acres to a mile?—I do not think we take so little as that anywhere.

Not near the coast?—In many places near the coast we have taken a great deal more than that. In all the part between Folkestone and Dover I should think it would be double that amount, because the cuttings and embankment are very heavy indeed there.

What is the usual width you can be content with?—I never saw it taken at less than a chain wide, and that would give eight acres to a mile: that we always take without cuttings or embankments.

How many years' purchase are given?—I have universally given, since the funds have been at their present price, thirty-three years' purchase to begin with.

How many years' purchase for severance?—That must depend upon the amount of damage done.

How many years' purchase have yo ever given for severance?—Many hundred per cent. in some cases. I will mention a case, in which twenty-five acres of land were valued at 2500*l.*, and the amount given was upwards of 10,000*l.* That would be 400*l.* per cent. upon the value of the land for severance and consequential damage.

In the ordinary case of going through a farm, where you cut a field in half, and pay 100*l.* an acre for thirty-three years' purchase

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for the land, what would you expect to pay for the severance for dividing the field, besides the purchase of the land?—I do not think any general rule can be laid down; it depends upon the situation with reference to the homestead, and with reference to roads.

And with reference to water?—I think there are clauses in every railway act I have seen, that the company shall provide an equal quantity of water to that cut off. We do not generally take that into our estimate; we generally provide it.

In some cases is not that almost impossible?—Then we pay for the loss; because, whether it is one acre or 100 cut off, of course the amount of damage done must depend upon that. In estimating for lines of railway, when I give evidence before Parliament, I always estimate twenty-five per cent. for a forced sale, and fifty per cent. for severance, putting in the first instance a high value.

Putting in the first instance thirty-three years' purchase, then twenty-five per cent. for forced sale, and fifty per cent. for severance? —Yes. In some instances the severance will be 100 or 200 per cent., in other cases nothing; depending entirely upon the circumstances of each case.

In that case where 10,000*l.* was given, was that given to ward off opposition, or on account of the detriment that was done to the place? —The amount of the injury was determined by reference, and I presume the referees took into their consideration the damage done to the estate.

You attribute it, then, to the detriment that was done to the place, and not to the object of warding off the opposition of the individual? —Perhaps I should make myself better understood by giving this explanation. The case was mentioned of my Lord A.; I think I had better adhere to that case. The agreement was entered into prior to the passing of the act, the company undertaking to pay all the costs. It was referred to two arbitrators and an umpire, a barrister: they heard evidence upon the case, and gave their award of 11,000*l.* I think I can state that the value of the land was about 100*l.* an acre; that would amount to about 2800*l.* The difference was made up of damage to the estate generally, and to the mansion more particularly; that would be about 8200*l.*

How near did the railway pass to the mansion?—I think it was a third of a mile. There was a turnpike-road between the railway and the mansion.

Can you form any judgment what proportion in general the

amount given for damage and severance bears to the value of the land?—In the estimate for the construction of a railway I estimate fifty per cent. upon the cost of the land for severance and damage, except in some extraordinary cases, and then I always put on an amount beyond that, depending upon the injury done.

You say that you never take less than twenty-two yards: what is the absolute width used for the two lines of rail?—Four feet eight and a half is the gauge of the Dover line; and you require about five feet between the two lines of railway, and about half that width on each side of the railway simply for ballasting, making about twenty feet for the mere ballasting and the rails.

Supposing it is upon a level, do you still require that space on each side?—We make a small bank on each side, besides a ditch. The companies generally suffer great inconvenience, when the railway is not wide enough for the workmen to work during the passing of the trains.

In cutting through hills what width do you take?—It depends upon the depth of the cutting, and upon the angle at which the side will stand.

The question refers to the railway line itself?—We take the same width for the railway line, and add to that the width of the embankment or the cutting.

You said that thirty-three years' purchase was what you generally offered on the part of the company. What is the ordinary selling price of land in Kent?—I should say that in the Weald of Kent the ordinary price, before the construction of the railway, was five or six and twenty years' purchase. I think I stated that thirty-three years' purchase was only since the high price of the funds. The formation of the railway has increased the price of land in the Weald of Kent about two years' purchase.

What is the average rent?—I should say 1*l.*; I am speaking of the Weald of Kent. Before the funds were at their present price, the amount offered by the company was thirty years' purchase for the value of the land; seven and a half years for compulsory sale, and fifteen for severance: making fifty-two. Since the funds have been at 100, we have paid thirty-three years' purchase for the land, eight and a quarter years' purchase for compulsory sale, and sixteen and a half for severance.

Do you know of any instance of a residence being injured, the

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owner of which had no property on the line?—I think it depends entirely upon the class of residence.

Do you know of any instance where the owner has complained that his residence has been injured, having no property on the line?—I think I have known instances of gentlemens' residences, where a complaint has been made of injury; but I do not think they were injured after the formation of the railway. During the construction there is no doubt they were injured to some extent.

In those cases did you consider yourselves bound to take into consideration their complaints and claims?—Not at all; that would open so wide a field, that it would be impossible for any company to construct their works if that field were opened. After the passing of the act they could have no case, because I might construct a factory, or I might construct anything else upon my own land, which might be a greater nuisance than this railway. If you opened that case at all, you might have to compensate every man within ten miles of the line.

In the case of the Brighton Railway, did they give large sums of money for the right to make tunnels through the hills?—Yes; in two cases they took other land, as well as the right to tunnel under.

Supposing a railway cuts through a hill for the length of a mile; upon what principle would you value the loss to the proprietor of the land?—I think I should value it as any other land taken.

The tunnel does not hurt the land above?—I never saw any case, except at Primrose-hill, (where the spoil was all carried away), where it did not do material damage to the land above; nearly the whole material of the tunnel goes to the top.

Suppose a tunnel under a town?—Then the material must be all carried away. I was speaking of agricultural land.

Have there been any cases to your knowledge of a tunnel under a town?—Yes.

How have the householders been compensated in that case?—In the case to which I have just referred they are now constructing the tunnel without an act of Parliament. We were obliged to purchase the right to pass under the houses, simply because the soil belonged to the owners. We paid very small sums for it We paid each man, I think, 40*l.*; and in the cases of parties having larger houses, of course, they were paid somewhat more.

How deep below the level is it?—Sixty feet.

How were those houses supplied with water?—They have all wells.

Are you below the level?—We are below the level. We have entered into a covenant with each of the parties to supply the same quantity that they had before, if they required it. It is upon the Tunbridge Wells branch.

With respect to the standing orders, is there not now a sort of understanding between railway companies that it is not professional to oppose each other upon the standing orders?—I think it is understood that where bills are not opposed they are sure to get through the standing orders; and when they are opposed there are great doubts about it; probably one being quite as accurate as the other.

Is it not the understanding that railway company A. opposing the branch of railway company B. would not think it professional to oppose it on the standing orders?—I was not aware that there was any implied understanding of that sort.

Is it not the fact that there is scarcely a railway bill of any length that ever has complied, or ever will comply, strictly with the standing orders?—It is quite impossible. I am acting now under one which passed in the last session of parliament, and I should think there are at least one-fifth of the fields put down to wrong names; and that passed simply because no one opposed it. Now there are other bills which I know have been thrown out, which had not one quarter of the objections which there were to that bill.

Do you think it necessary always to enter strictly into the title of the land you take?—That is not my department; I am not the solicitor. The only answer that I can give is, that railway companies do not require a selling title; they simply require a holding title, not a market title.

Do you know whether the railway companies pay the expense of all that?—Entirely, in all the arrangements that I have had to do with.

Supposing a house had cost 10,000*l.*, and had been finished last year, and that your railway came through it, what compensation would you give the owner of that house; would you give him the amount of the money that he had so expended?—Yes; and something more.

You would not take the house and give him thirty years' purchase upon 200*l.* which might be the rent he might get for it, but you would take into consideration the amount of money which he had just laid out upon it?—I think you must as nearly as possible place the man in the same position as he was in before the railway

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came. I think no railway company should inflict a hardship upon a private individual if they can ascertain the facts.

Would you not also allow something for the annoyance of being removed?—Yes; if he had the year before expended 10,000*l.* for his own comfort, and the company come and take that property away, I should say he should have something beyond the 10,000*l.* for his removal.

31 *May*, 1845.—*The* EARL FITZWILLIAM *in the Chair.*

Mr. *Edward Driver* examined:—

You are a surveyor?—I am.

Can you give the committee any general information respecting the rates at which land has been purchased by railways, distinguishing the price of the land from the severance and damages?—I think I am in a situation to give your lordships information upon the Great Western line, in which I was concerned, having purchased about the first sixty miles from London, and the portion of it from London to Maidenhead. I gave evidence upon that before Parliament, and subsequently treated, and purchased the same, and kept an account of the result; and I can give that information. The quantity of land was 190 acres from London to Maidenhead. My estimate and evidence before Parliament upon the average was 208*l.* an acre, including every description of expense. I found afterwards, by taking out the figures, that it came to the following result:—that 117*l.* an acre was the cost for the land only; but, including the severance, it was 194*l.* an acre.

That would make the severance 77*l.*?—Yes; and the tenant's interest was 15*l.* That produced an average of 209*l.* an acre for the land and severance and tenant's interest, my evidence having stated before Parliament an average of about 208*l.*, so that I was within 1*l.* an acre of my first estimate, shewing that I had formed a tolerably correct estimate. Upon general principle, my mode is this:—to charge the land first at the full rent; if it is worth 35*s.* an acre I should call it 40*s.* an acre. I then put it at thirty-three years' purchase. I add a fourth to that for compulsory sale, making forty-one years and a half. Then I find a moiety more must be added, making sixteen years and a half purchase more, to cover severance, which makes fifty-eight years' purchase; and I have generally said that it comes to sixty years' purchase to cover every thing.

Have you ever been employed as an arbitrator?—Yes, in several cases.

Have you found that your colleagues have thought that this was a right principle?—I have found that they may have asked more; but they have always been satisfied when the verdict has been to this amount.

Have the gentlemen that you have met with in that way admitted the principles you have just stated?—Quite so.

This was at the commencement of the Great Western Railway?—Yes.

There was more opposition then to the sale of land for railway purposes than there is now?—We wanted to pay the full fair price for every thing. We had only two juries in the whole of the distance between London and Maidenhead, and those were both very different cases; they were market gardens, where the profits were very enormous. The grower or occupier shewed the produce of pears and apples, and what they could get for them in Covent-garden market.

Would you not say that that is rather valuable land upon the greatest part of the line to Maidenhead?—It is more valuable than upon the Brighton line; but I valued upon the Brighton line also. I am quite satisfied that this mode of calculation would ensure full justice to the landowners, without introducing any fancy value or extravagant demands.

You do not take into consideration that the property of the individual is most likely benefited by the railway?—I think not.

It is no doubt your opinion that landed property is generally very much improved in value by having a railway run through it?—I think it is; I think it has equalized the value of land very much.

In letting land for building purposes upon large estates, the ground rents fixed have some reference to what are expected to be the profits of the builders?—In that case the locality is the inducement to the person to take the land, and therefore it does affect the value; but that is a sort of private agreement between parties.

Does not the railway stand very much in reference to the land upon which it is placed in the same relation that houses do to the land upon which they are built?—As far as residences go, I think it does.

Supposing that a railway was to go through a gentleman's residence that he had just finished at the expense of 10,000*l.*, how should you value what he ought to have; should you do it by reference to that cost of 10,000*l.*, or upon what principle?—If I felt that the railway had prejudiced him, either as to letting or as to sale, I should

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exercise my judgment in considering what would be the amount of the depreciation on this account.

Suppose it goes through the house and destroys it?—I should pay him the full cost of the building.

And the value of the land it stood upon?—Yes; and compensation for any inconvenience he sustained besides, or disappointment.

In the case of taking a gentleman's residence in that way, would you be guided by the amount of money he had just expended, or would you be guided by the rent which you might think that gentleman might get for the house if he let it?—I think I should be guided by the money he had spent, thinking that the railway company ought to pay for the whole amount of the loss he had suffered. I believe that has always been the case.

You do not consider the letting value of the place to be the real criterion of its value to the owner?—Certainly not; and particularly with reference to a residence.

You do not consider that any large country house lets for anything like the money which it has cost to erect it?—Certainly not. Gentlemen are always desirous of letting their houses, if they can get a good tenant, at a very moderate rent, in order to ensure the house being kept warm. I have houses which I should be glad to let upon those terms. A house, if untenanted during the winter, suffers most materially.

It may frequently happen that a landed proprietor of considerable fortune may, from temporary circumstances, wish to let a residence for two, three, or five, or a short term of years, in which case the rent he gets is no criterion of the value of the property?—Certainly not. I should think the rent would hardly be the interest of the value of the materials to be sold, it is of so little consequence.

What was the average money that the land between Shoreham and Chichester cost?—I have not the means of telling the average very accurately; but I should think it will amount to an average of between £220 and £230 an acre.

It goes through parts of the best land in the county of Sussex?—It goes through very fine agricultural land.

Do you think that the circumstances which guided you in coming to fifty-eight years' purchase would equally guide you now if you had to do it again?—Precisely. I have gone upon the same principle in valuing from Brighton to Chichester.

In that distance to Maidenhead, can you state what was the lowest

value of any particular lands, and what was the highest value of any particular lands?—In that district there was some very good land; perhaps the average would be about 50*s.* an acre as the rental for agricultural purposes, and I do not think any was under 30*s.*

Would you think it advisable that a minimum number of years' purchase should be laid down below which no land should be taken by a railway company?—I think fifty-eight years' purchase would be a very full price to fix as a minimum.

There are many cases in which there is no payment required for severance?—There are some cases, certainly.

In those cases would it be fair to put fifty-eight years' purchase as the price?—No, I do not think it would; nor do I think it possible to make any general rule applicable to every case. If you take the corner or a portion of a field it may do not a shilling damage beyond the extent of land taken.

You do not think a minimum price necessary for the protection of the small landed proprietors?—I am quite sure there is no occasion for it. Railway companies are always anxious to pay liberally for every thing they take.

Besides, does not your view of the compensation which ought to be given depend very much upon the shape of the ground, whether the railway passes it upon a level, or upon an embankment, or in a cutting?—I do not think that affects it much, because if it is upon an embankment they must provide communications, and if it is upon a level they can do no more. It more affects it when it cuts the estate or the field diagonally. Sometimes it goes in a parallel line with the boundary of the field, without doing half so much damage as in the other case.

Though the compensation for severance must be uncertain in its amount, the number of years' purchase on a full rent is a certain fixed quantity?—Yes.

So also is the addition to be made to that upon the ground of the sale being compulsory?—Yes.

Have we not, then, composed of those two items, a fixed total?—I do not see any objection to that; that would be forty-one and a half years' purchase for the first purchase of the land, independent of any compensation for the severance.

Here then we have a fixed quantity?—Yes; but I wish my observation to be understood to refer to freehold land.

You spoke of forty-one and a half years' purchase as being upon a full rent; do you think it would come to something like forty-five upon the actual rent paid?—I think not.

Take the case of an acre of larch plantation, twenty years old, of thriving trees; how would you value that?—That would be a special case, and it would require particular consideration. The value of that must be the timber.

The timber may be worth not above 100*l.* an acre, yet in fifty years more it might be worth 1000*l.*?—This is just one of those cases in which I do not think it is possible to provide a general rule.

But in that case it would be the price to be paid for the timber, and that price would depend upon the probable increasing value of the timber?—A plantation of firs is a very uncertain thing, certainly.

It is in the nature of a reversionary interest?—Yes; and has a great deal to do with the fluctuation of price.

In a private agreement between an owner of land and a builder, who is about to speculate upon it, the ground rent will to a great degree vary according to the expectation that the builder may have of more or of less profit. Does not the same principle apply to any other work which may be taken upon the speculation of private individuals, whether they be simply individuals or united together in the form of a company?—I think in railway companies there is no analogy whatever with building speculations, or with turnpike roads or other public improvements, because railway companies are so organised that the public cannot derive any advantage from them or from their contiguity, except where there are stations; therefore you can make no advantage of railways as you would of turnpike roads going through estates.

Then, if that be the case, that nobody can avail himself of the advantage of a railway except at particular points, does it not follow from that that the landowner whose property is taken for such speculations has a greater claim to consideration on the ground of the large profits to be made by those speculators than if those profits are likely to be small?—I may observe that the mode of computing for railways at fifty-eight years' purchase applies, because in the case of a railway there is no collateral advantage to be derived from it; whereas if it was a turnpike road going through the same estate, I should never consent to pay fifty-eight years' purchase for it, because I should

say the advantage to the owner from the formation of the turnpike road would be such that he ought to give the land without any price; at least in some cases such a course might be deemed advisable.

Then you do not consider that the traversing of an agricultural estate by a railway, unless it happens to be in the immediate neighbourhood of a station, is advantageous to the land?—No, I do not think it is.

Then does not that form an argument in favour of the price to be paid to the landowner whose land is to be sacrificed, varying to a certain degree according to the profits which it is expected that the railway company may make?—I do not know that I have the means to answer that question, from having formed no opinion upon that subject. It does not appear to me that there ought to be any extra price given on that account, certainly.

Do you know any case where a person's residence has been injured, and the owner of that residence, not having any property actually on the line, has been compensated for the injury to his residence?—None; that principle has never been admitted at all.

Have you known any instances where considerable injury has been done in that way?—I do not think I have known any.

Mr. *John Cramp* examined:—

Are you a land valuer?—Yes.

In what part of England?—In the eastern division of the county of Kent principally.

Where is your residence?—My residence is in the Isle of Thanet, in the parish of Margate.

In cases where there are none of those peculiarities to which you have previously alluded in the situation of land, how have you proceeded in your valuations of the land where there has been a difference of opinion between the landowner and the company?—It has depended upon how the line passed through the estate, whether upon its margin, whether through its centre, or whether by separating a very large portion from the homestead, making the inconvenience of the portion severed either very great or very small. This has been the system upon which I have acted relative to compensation for damage and the value of the land. I have generally taken three points to fix myself to. The first is the fair value of the land in the neighbourhood, upon which I have usually put fifty per cent. in consideration of a compulsory sale.

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Fifty per cent. in addition to the full value of the land?—In addition to what I should call the marketable value of the land.

What do you mean by the "fair value," in reference to the number of years' purchase?—That would be, taking the rental, and giving it thirty years' purchase.

You mean the full rental?—The full rental.

Making the whole forty-five years?—Yes; supposing that the value of the land was 40*s.* per acre, of course I should call it worth 90*l.*

Are you able to strike an average of the amount of the severance?—The severance is exceedingly various, according to whether the line runs parallel or diagonally, or across the estate, cutting the enclosures diagonally, and leaving triangular pieces on each side. I have then gone into calculations relative to the increased labour that must necessarily arise afterwards by the turn of the plough, and all the labour required in working the land that is thus severed. That I have arrived at by going practically into the cultivation. I find that the plough, by being obstructed in the turning, will lose forty yards in its straight direction every time; then, of course, in the same furrow on the other side there will be the same obstruction again; and that, upon a certain quantity of land for a certain length of railway, will amount to so much labour being lost in the ploughing, which ploughing I have given a certain value to, and upon that I have calculated thirty years' purchase. That is what I should call the damage arising to the future cultivation of the land by the increased labour and expense. The next point would be afterwards, when I was satisfied with respect to the value of the land, and the damage done by severance: I then take a general view of the estate, to see what its deterioration is by having that severance, and by having that obstruction across the farm. In some cases it is much; in other cases it is less; and upon that, having no tangible point whereon to calculate, it has been an operation of the judgment altogether what I would give for it without the line, and what less I would give for it with the line. Those are three points that I generally fix myself to; and in doing so I have sometimes had some very strong battles to fight. Where the parties have left it to me I have generally succeeded; but usually the proprietor, as he advances towards a jury, begins to be a little nervous, and his solicitor has in several cases advised him by all means to compromise rather than go to a jury; for the decision of a jury is so uncertain, and often so contrary, per-

haps, to sound evidence, that it deters many from going before a jury; and in several cases I am quite satisfied that many hundreds of pounds have been taken less than ought fairly to have been given for the property.

Upon any given length of railway, say five or ten miles, without going into the particulars, what do you think the compensation for severance has been per mile, upon the average?—A mile will take in a great variety of severances, because it will pass through three or four estates in a mile. I should say that the compensation for severance for land taken by the railway has been from 50*l.* per acre to 150*l.*

Should you put the average at 100*l.*?—No; not so much. I think the greater number have been confined to 50*l.* or 70*l.*; sometimes, where it has been very great, it has gone as far as 100*l.* or 150*l.*

Do you know many cases the other way, where individuals have been deprived of their land, and have been forced to accept a certain amount of remuneration, and have then felt it, and have afterwards continued to feel it, a grievance?—Yes; on one farm in particular that happened, between Ashford and Folkestone. That was one of the cases in which I was engaged. The parties there, I believe, took about seven acres and a half of land, for which they paid 1250*l.* The intrinsic marketable value of the land was somewhere about 60*l.* or 70*l.* an acre. This was also a compromise between the proprietor and the railway company, for my estimate went far beyond that. Since that, the occupier, who had a twenty-one years' lease at the time, has told me that if he could get rid of the railway he would willingly pay 100*l.* a year; that he found it a nuisance and interruption to the usual course of his operations in agriculture and grazing, because it went through both; and that he would willingly give 100*l.* a year more to be rid of the railway.

Do you consider that the noise, and other circumstances connected with the working of the railway are injurious to the grazing of cattle in the fields?—No. I do not think there is much in that argument, unless it is horses or fresh cattle put upon the land; for a little while they are alarmed, but they soon become reconciled to it. I meant that it was inconvenient in shifting stock; for this railway went through the centre of the estate. He had grazing land on either side of it. He was confined to one communication, which was the bridge, through which he was obliged to drive his stock, and they became mixed; and he was obliged to have two or three people where

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he had only one to open the gate before. Again, the arable land was cut off from the homestead, and his horses were often alarmed at the noise of the engines passing when they had just got upon the bridge, or near it; for he was obliged to pass this bridge to cultivate every acre of land upon his farm. In point of fact, it is almost impossible to foresee all the inconvenience and all the damage that will be sustained, and that is the difficulty we have in arriving at the positive value that should be paid for compensation.

In this case was the bridge over or under the railway?—Over.

Do you really think that he sustained a loss or injury to the extent of 100*l.* a year?—I should say that you could not find it to be 100*l.* a year by merely calculating the inconveniences, unless, perhaps, he kept a diary. If every day that he sent out three men instead of one he had put it down, then at the year's end he would arrive at something like a tangible point on which to rest his damage; but he speaks in a general way—"I find so many inconveniences that I would willingly give 100*l.* a year for the railway to be taken away."

2nd June, 1845.—*The* EARL FITZWILLIAM *in the Chair.*

Mr. *John Swift* examined:—

Where do you reside?—At Liverpool.

What are you?—The Solicitor of the Grand Junction Railway Company.

Have you any knowledge of the terms on which the land generally has been purchased for the Grand Junction Railway Company?—I superintended the purchase of a considerable portion of it.

Can you state the total price that was paid for the land on the line?—I think altogether about 120,000*l.* for seventy-eight miles. That included station land at Birmingham.

Does that include the compensation for severance and damage, or merely land?—The whole.

What number of acres were taken?—About 800 acres, I should say, from recollection.

Could you, on any given length of ten or fifteen miles, where there was no remarkable circumstances either to make the price higher or lower, state what was the price?—I do not think there was any great difference between any districts, except of course where we approach a town. I do not know what the average may have been; perhaps 100*l.* an acre.

In a purely agricultural country it is about 100*l.* an acre?—Yes.

Have you any knowledge what, on an average, would have been the rent of that land?—I should think not 30*s.* an acre.

A good deal of it is very poor land, is it not?—Yes.

You think the average could be put as high as 30*s.* an acre?—I can only state that I think it would be to that amount.

You think it would be more than 25*s.* an acre in farming land, on the average, except of course near Liverpool?—We do not go near Liverpool; we begin at Warrington, and thence have only two miles in Lancashire, which is meadow land, and that lets for 4*l.* or 5*l.* an acre.

What did you pay for that land?—300*l.*, I think.

Including every thing?—Yes; excluding, of course, communications.

Are you able to state the number of years' purchase upon the average that was given for the land between Newton and Birmingham?—No. If the rental was 30*s.* and the price 100*l.* per acre, it would be sixty-six years' purchase.

When you proposed compensation, did you take the letting value of the land, then the inconvenience in consequence of cutting diagonally through a field, and the inconvenience in ploughing, so much per cent. on the original letting, and then also for the additional severance so much per cent.? Do you assess it upon that calcualtion, or upon the gross estimate?—We had a valuation of that sort made, based on what the letting value was.

And then how much for severance?—If the landowner had not asked us more than double the value of the land we should have paid it without inquiry; if he asked six times as much, we should not; in the latter case we should have inquired into the two questions of land and of damage separately.

What has been your offer for land; more than thirty years' purchase?—Yes. If we had been called on to make an offer with the prospect of going to a jury, we should, for our own protection, have offered a price far beyond what they could have got from any body.

You stated that you supposed it was about sixty-six years' purchase at the time you made those arrangements; what sort of arrangement would you have to make now; would it be more or less, do you think?—I have had occasion lately, as acting for the Lancaster and Carlisle Railway Company, to know what has been doing generally, and I should say that there they paid more years' purchase. There we have

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only had one jury case hitherto, and the jury gave less than the sum offered.

Has your valuer given you the value of the land itself first, not taking into consideration the severance, but merely the value of the land?—He gives a statement of what he has ascertained to be the rent, and upon that he first assumes a certain number of years' purchase.

What is the number of years' purchase upon that?—I have stated that the cases of which I was cognizant on the Grand Junction railway, I could not reduce them respectively into years' purchase, taken generally.

That was not the average, I suppose?—Yes, including severance.

Without including severance?—Our surveyor always begins with thirty years' purchase or thirty-five years' purchase, and all the rest is damage. They put on a sum for what they call compulsory sale; five years' purchase, frequently.

Supposing there was a strip like that which is occupied by that which belongs to the railway company, running through the lands of these various proprietors, have you any doubt they would readily pay quite as large a number of years' purchase in order to secure that line as they have obtained from you?—Not always; but I think they would very often, or generally. If I had an estate I would not willingly have a piece taken out of the middle of it if I could prevent it.

You stated, as I understand you, that it was about thirty-three years' purchase that they got for the value of the land?—Yes; that is the beginning of the calculation, to ascertain what the landowner is ultimately to be paid.

As to the value of the land itself, without severance?—Yes, it would not matter how you work out the process.

You would decompose the demand of the landed proprietor, and see how much was the rental value, and how much you could afford to pay for severance?—If it were an unreasonable sum that he asked in gross, we should object, but not otherwise.

Do you think landowners could be put in a better position than they are by the bill that passed this session—the Land Clauses Consolidating Bill?—I do not; because I think, with the option of a special jury on the one hand, or arbitration on the other, they really have, as it appears to me, every sort of protection you can conceive; and, generally speaking, I think that the reasonable prejudice of the jury is in favour of the landowners.

V. *On the Manner of assessing Compensation.*

Under the provisions of the Consolidation Acts, compensation may be assessed—1. By justices of the peace; 2. By arbitrators; 3. By surveyors; 4. By a jury.

Compensation assessed by two justices.

And, first, as to the compensation assessed by justices of the peace. The 8 Vict. c. 18, s. 22, post, App., 122, enacts, that, if no agreement be come to between the company and the owners of, or parties enabled to sell and convey or release any lands taken or required for, or injuriously affected by the execution of the undertaking, or any interest in such lands as to the value of such lands, or of any interest therein, or as to the compensation to be made in respect thereof(*i*), and if, in any such case, the compensation claimed *shall not exceed* 50*l.*, the same shall be settled by two justices (*k*). So, in all cases where the company injure, or take temporary possession of any lands for any purposes connected with the railway, and the sum in dispute does not exceed 50*l.*, the compensation is in like manner to be settled by two justices (*l*). And if the company enter upon any private road, and no agreement be made as to the amount of compensation which the owners and other persons interested in the road are to receive, the difference must be settled by two justices. (8 Vict. c. 20, s. 30, post, App. 166).

So, where lands required to be taken by the company are in the possession of tenants for a year, or from year to year, and the tenants are required to deliver up the lands before

(*i*) The preliminary steps to be taken have been already considered, ante, 145.

(*k*) See also 8 Vict. c. 18, s. 68, post, Appendix, 130.

(*l*) See 8 Vict. c. 20, s. 6, post, Appendix, 159; Ibid., s. 44, post, Appendix, 171, taken in connection with 8 Vict. c. 18, s. 22, supra.

Compensation assessed by Two Justices.

the expiration of their term, two justices are authorised to assess the amount of compensation. (8 Vict. c. 18, s. 121, post, App., 148).

In both the last-mentioned cases, the jurisdiction of the justices seems to attach, although the amount of compensation in dispute may exceed 50*l.*

Two justices are also empowered to apportion the amount of rents payable in respect of copyhold lands, when only part of the lands are required to be taken for the purposes of the Railway Act, (8 Vict. c. 18, s. 98, post, App. 141). And they may, under the like circumstances, apportion the amount of rent-charges, &c. (*Id.*, s. 116, post, App. 146).

So, if lands are comprised in a lease for years unexpired, and a part only of such lands are required by the company, the rent of the remaining portion of the land is to be apportioned by agreement, or by two justices; and, after such apportionment, the lessee is liable only for the rent apportioned. (*Id.*, s. 119, post, App. 147).

The following is the mode of proceeding directed in all cases of disputed compensation authorised to be settled by two justices. Any justice, upon the application of either party, may summon the other to appear before two justices, at a time and place to be named in the summons; and, upon the appearance of the parties, or, in the absence of any of them, upon proof of due service of the summons, the justices may hear and determine the question in dispute, and for that purpose may examine the parties, or any of them, and their witnesses, upon oath; and the costs of every such inquiry are in the discretion of the justices, and they may settle the amount thereof (*m*).

In order to give the justices jurisdiction, they must be acting justices for the county or city, &c., where the mat-

(*m*) 8 Vict. c. 18, s. 24, post, Appendix, 123. See also 8 Vict. c. 20, s. 142, post, Appendix, 193.

Compensation assessed by Two Justices.

ter requiring their cognisance arises, and not be interested in the matter; and, if the question arises in respect of lands situate not wholly in any one county or city, justices for the county or city where any part of the lands are situate may act; and in all cases the two justices must be assembled and acting together. (8 Vict. c. 18, s. 3, post, App. 118, (*n*)).

The justices, in estimating the purchase-money or compensation, are required to regard the damage which may be sustained by reason of the severing of the lands taken, from other lands of the owner. (*Id.*, s. 63, post, App. 130).

Two justices are also authorised to determine differences as to the kind or number of accommodation works, and the repairing thereof (*o*), and as to deviations (*p*); also to hear objections to the taking of lands (*q*): but their powers in these and similar matters, do not properly belong to the subject-matter now under consideration.

Compensation assessed by arbitration.

1. The provisions inserted in the Consolidation Acts, whereby parties are enabled to refer their claims for compensation to arbitration, are altogether new. Upon this subject, the stat. 8 Vict. c. 18, enacts, that, if the compensation claimed or offered, in respect of lands required to be taken for the railway, or injuriously affected thereby, exceeds 50*l.*, the party claiming the compensation shall have the option of submitting the claim to arbitrators, or to a jury; and if the party claiming the compensation desires to have the amount settled by arbitration, he must, before the company have

(*n*) See also 8 Vict. c. 20, s. 3, post, Appendix, 158.

(*o*) See 8 Vict. c. 20, s. 62, post, Appendix, 175; Id., s. 69, post, Appendix, 178.

(*p*) Id., s. 11, post, Appendix, 160.

(*q*) 8 Vict. c. 20, s. 36, post, Appendix, 168.

Compensation assessed by Arbitration

issued their warrant to the sheriff to summon a jury, signify his desire, by writing to the company, in the manner already pointed out (*r*). (S. 23, post, App. 123).

The party having thus signified his desire, the statute points out the course of proceeding. It directs, that, when any question of disputed compensation is to be settled by arbitration, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator must be made, on the part of the company, under the hands of any two of them, or of their secretary or clerk, and, on the part of any other party, under his hand, or, if such party be a corporation aggregate, under their common seal; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if, for fourteen days after any dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party, to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then, upon such failure, the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the mat-

(*r*) See ante, 160; also 8 Vict. c. 18, s. 68, post, Appendix, 130; and 8 Vict. c. 20, s. 6, post, App. 159. As to when the company may issue their warrant to the sheriff, see 8 Vict. c. 18, s. 38, post, App. 125.

ters in dispute; and in such case the award or determination of such single arbitrator is final. (*Id.*, s. 25, post, App., 123 (*s*)).

Compensation assessed by Arbitration.

If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint, in writing, some other person to act in his place; and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted has the same powers as were vested in the former arbitrator at the time of such his death or disability. (*Id.*, s. 26, post, App., 124).

Where each party nominates an arbitrator, the two arbitrators are required, before they enter on the inquiry, to appoint an umpire, whose decision on matters referred to him is final. (*Id.*, s. 27, post, App., 124). If the umpire dies, or becomes incapable, the arbitrators may appoint another. If the arbitrators neglect to appoint an umpire, the Board of Trade may appoint one. (*Id.*, s. 28, post, App., 124). If a single arbitrator dies after appointment, there must be a new arbitration. (*Id.*, s. 29, post, App., 124). If either of the arbitrators refuses, or for seven days neglects to act, the other may proceed *ex parte*. (*Id.*, s. 30, post, App., 124).

If the arbitrators fail to make their award within a specified period, the matter referred must be determined by the umpire. (*Id.*, s. 31, post, App., 124).

Lastly, if the arbitrators and umpire fail for three months to make an award, or if no final award be made, the com-

(*s*) Arbitrators may also be appointed to decide certain disputes, under the provisions of stat. 8 Vict. c. 20. See s. 126 and following sections, post, App. 190,

Compensation assessed by Arbitration.

pensation must then be settled by the verdict of a jury. (*Id.*, s. 23, post, App., 123).

Every arbitrator and umpire, before he enters into the consideration of any matters referred to him, must, in the presence of a justice, make and subscribe the following declaration:—

"I, *A. B.*, do solemnly and sincerely declare, That I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the act [*naming the special act.*] *A. B.*

"Made and subscribed in the presence of ."

And such declaration must be annexed to the award, when made; and if any arbitrator or umpire, having made such declaration, shall wilfully act contrary thereto, he is guilty of a misdemeanor. (*Id.*, s. 34, post, App., 125).

The arbitrators or umpire are authorised to examine the parties, or their witnesses, on oath, and to call for the production of any documents in the possession or power of either party. (*Id.*, s. 32, post, App., 124).

All the costs of any arbitration, and incident thereto, are to be settled by the arbitrators, and shall be borne by the company, unless the arbitrators shall award the same, or a less sum, than shall have been offered by the company; in which case each party is to bear his own costs incident to the arbitration, and the costs of the arbitrators must be borne by the parties in equal proportions. (*Id.*, s. 34, post, App., 125).

The arbitrators must deliver their award in writing to the company, who are required to retain the same, and forthwith, on demand, at their own expense, to furnish a copy thereof to the other party to the arbitration, and at all times, on demand, to produce the award, and allow the same to be inspected or examined by such party, or any

person appointed by him for that purpose. (*Id.*, s. 35, post, App., 125).

Compensation assessed by Arbitration.

The submission to any arbitration may be made a rule of any of the superior courts (*t*), upon the application of either of the parties. (*Id.*, s. 36, post, App., 125).

No award made with respect to any question referred to arbitration can be set aside for irregularity or error, in matter of form (*u*). (*Id.*, s. 37, post, App., 125).

(*t*) This provision rests upon the stat. 9 & 10 Will. 3, c. 15, which enacts, "that all merchants and others, who desire to end any controversy, suit, or quarrel, (for which there is no other remedy but by personal action or suit in equity), may agree that their submission of the action or suit to arbitration or umpirage shall be made a rule of any of the king's courts of record, and may insert such agreement in their submission, or promise, or condition of the arbitration bond: which agreement being proved upon oath by one of the witnesses thereto, the court shall make a rule that such submission and award shall be conclusive; and, after such rule made, the parties disobeying the award shall be liable to be punished as for a contempt of the court, unless such award shall be set aside for corruption, or undue means used in its procurement, or other misbehaviour in the arbitrators or umpire, proved on oath to the court, within one term after the award is made." The usual mode of enforcing obedience to an award after the submission is thus made a rule of court, is to apply for an attachment, which affords speedy redress to the party injured. An attachment will lie against a railway company, *R.* v. *Eastern Counties Railway Company*, 10 A. & E. 567; but it is said, "that when a writ is directed to a corporation to do a corporate act, and no return is made, the attachment is granted only against those particular persons who refuse to pay obedience to the mandamus; but, where it is directed to several persons in their natural capacity, the attachment for disobedience must issue against all, though, when they are before the court, the punishment will be proportioned to their offence." Bull. N. P. 201. See also *R.* v. *Ledyard*, 1 Q. B. 616. A submission may be made a rule of court in vacation as well as in term. In re *Taylor*, 5 B. & A. 217.

(*u*) It is difficult to lay down any general rules as to the distinction between matters of form and matters of substance. It may be useful, however, on this point, to refer to the decisions on the 5 Geo. 2, c. 19, which empowered justices on appeal to amend "defects of form" in judgments or orders. See *R.* v. *Great Bedwin*, Burr., S. C., 163; *R.* v. *Chilverscoton*, 8 T. R. 178; *R.* v. *Amlwch*, 4 B. & C. 757; *R.* v. *Bingley*, 4 B. & Ad. 567, n. See also *Brook* v. *Jen-*

arbitrators, in estimating the purchase-money or compensation, are required to observe the rule before mentioned, as to regarding the damage to be sustained by reason of the severing of the lands taken from other lands of the owner (*x*).

There are also cases where the exclusive jurisdiction to decide on disputed compensation is vested in arbitrators. Thus, in all cases where the compensation has been ascertained by a surveyor (*y*), by reason that the party could not be found, or was absent from the kingdom, such party, if dissatisfied, may, before he shall have applied to the Court of Chancery for the money deposited in the Bank, require the question of compensation to be submitted to arbitration, as in other cases of disputed compensation (*Id.*, ss. 64, 65, post, App., 130); and if a further sum is awarded, the company are required to pay the same. (*Id.*, s. 66, post, App., 130). In such case, all the costs incident to the arbitration are borne by the company; but if no further sum be awarded, such costs are in the discretion of the arbitrators. (*Id.*, s. 67, post, App., 130). And if persons are entitled to a right of pre-emption of superfluous lands, and no agreement can be made between such persons with the company, as to the price, then the price must be ascertained by arbitration; and the costs of the arbitration in such cases are in the discretion of the arbitrators. (*Id.*, s. 130, post, App., 150).

So, in all cases where the company are required, from time to time, to make compensation to the owners of mines lying on both sides of a railway, for all such losses and expenses as are particularly mentioned in the statute, any

ney, 2 Q. B. 265. All applications to set aside an award must be made before the end of the term next after the publishing of the award.

(*x*) Ante, 287.

(*y*) See post, 293.

dispute as to the amount of compensation in respect of such losses and expenses must be settled by arbitration. (*Id.*, s. 81, post, App., 181) (*z*).

Compensation assessed by Arbitration.

3. Compensation may be assessed by surveyors in the following cases:—If a party, who has received due notice, fails to appear at the inquiry held before the jury, or if, by reason of absence from the kingdom, he be prevented from treating, or if any party cannot, after diligent inquiry, be found, (8 Vict. c. 18, s. 58, post, App., 129), then two justices are required to nominate an able practical surveyor to determine the purchase-money or compensation to be paid for any lands to be purchased or taken by the company, and the compensation for any permanent injury to such lands; and such surveyor is directed to annex to his valuation a declaration in writing of the correctness thereof. (*Id.*, s. 59, post, App., 129). Every surveyor is required to make a declaration that he will act faithfully and honestly. (*Id.*, s. 60, post, App., 129). And the nomination and declaration must be annexed to the valuation, and preserved therewith by the company, and be open to inspection; (*Id.*, s. 62, post, App., 130); and all the expenses incident to every valuation must be borne by the company. (*Id.*, s. 62, post, App., 130). In all cases where the compensation has been thus ascertained by a surveyor by reason that the party could not be found, or was absent from the kingdom, such party, if dissatisfied, may, before he shall have applied to the Court of Chancery for the money deposited in the Bank, require the question of compensation to be submitted to arbitration, as in other cases of disputed compensation (*a*). (*Id.*, ss. 64, 65, post, App., 130). And we have seen that where lands are purchased or taken from parties under dis-

(*z*) For forms relating to arbitration, &c., see post, Appendix.

(*a*) See ante, 292.

Compensation assessed by Surveyors.

ability to convey, &c., the compensation (except where it has been assessed by a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices) must be assessed by two able practical surveyors, to be appointed by two justices (*b*).

Surveyors, in estimating the compensation, are required to observe the rule already referred to, as to regarding the damages sustained by the severance of the lands taken from other lands belonging to the owner. (*Id.*, s. 63, post, App., 130).

And, when common or waste lands are taken for the purposes of a railway act, the commoners are required to appoint a committee to negotiate with the company (*c*); but if no such committee be appointed, then two justices are required to appoint a surveyor, who is thereupon authorised to determine the amount of compensation which the commoners are entitled to receive for the extinction of their commonable rights. (*Id.*, s. 106, post, App., 143).

Compensation assessed by a jury.

4. In all cases where compensation is assessed by the verdict of a jury, the company originate the proceedings by issuing their warrant, under their common seal, to the sheriff of the county, city, &c., in which the lands are situate (*d*), whereby they require him to summon a jury to assess the compensation or purchase-money. It is not necessary to repeat, in this place, the remarks which have already been made as to the necessity of proceeding in strict compliance with the directions of the statutes, in taking all the steps which are preliminary to the holding of

(*b*) Ante, 152. See 8 Vict. c. 18, s. 9, post, App., 120.

(*c*) See 8 Vict. c. 18, s. 99, post, App., 141, and following sections.

(*d*) If the lands are situate in more than one county, the sheriff of each county has a concurrent jurisdiction. See 8 Vict. c. 18, s. 3, post, App., 118.

the inquisition. These steps, in ordinary cases, are, first, a notice from the company to the owners, &c., of the lands, requiring them to treat (*e*); secondly, the reply of the owners, in conformity with the terms of the notice (*f*); thirdly, the notice from the company of their intention to issue a warrant, and a tender of a sum as and for compensation (*g*); fourthly, the warrant from the company to the

Compensation assessed by a Jury.

(*g*) The following may be the form of the notice:—

Form No. 20.

The —— Railway Company.

Form No. 20. Notice from the company to the owner of lands, that they intend to issue a warrant to the sheriff, and stating the sum which the company are willing to pay for the lands, &c. (8 Vict. c. 18, s. 38, post, App. 125).

Whereas, by virtue and under the authority of an act of Parliament, intituled [*here insert the title of the special act*], we the —— Railway Company, by a certain notice, bearing date the —— day of ——, informed you A. B. and C. D., &c., that all those parcels of land, tenements, and hereditaments, mentioned and described in the schedule to the notice annexed, [*or*, particularly described in a map or plan to the notice also annexed, *as the case may be*, *see* Form No. 2, ante, 153], situate at, &c., belonging or reputed to belong to you, [*or*, some or one of you], or in which you [*or*, some or one of you] had or claimed some estate or interest, were required to be taken and used by the said railway company, incorporated by the said act, for the purposes thereof as in the said notice is particularly mentioned. And whereas you the said A. B. and C. D., &c., have failed to state the particulars of your claims for purchase-money or compensation for injuries or damage in respect of the said lands, tenements, and hereditaments, or to treat with the said company in respect thereof, as by the said notice you were required to do. [*Or*, "And whereas we the said company and you the said A. B. and C. D., &c. have not agreed, and we cannot agree, as to the amount of the purchase-money or compensation to be paid by us the said company to you for the purchase of the said hereditaments and of your estate and interest therein, or of the estate and interest therein, which by the said act you are enabled to sell and convey, and for any damage which might be sustained by you by reason of the execution of the said railway works"]. Now we the said company hereby, in pursuance of the said act, give you notice, that it is the intention of the said company, after the expiration of ten days from the service of this notice, and in pursuance of the provisions in the said act contained, to issue our warrant to the sheriff or other proper officer of the county of ——, and to cause a jury to be summoned to inquire of and assess the amount of such purchase-money and compensation as aforesaid, which you or either of you are entitled to receive under the provisions of the said act. And further take notice, that we the said company are willing to give the sum of —— pounds for the purchase of the absolute and

(*e*) See the form No. 2, ante, 153. (*f*) See the forms Nos. 3 & 4, ante, 156.

Compensation assessed by a Jury.

sheriff(*h*); fifthly, the notice given by the sheriff to the unencumbered fee simple and inheritance in possession of the said lands, tenements, and hereditaments, including your estate and interest therein, and the estate and interest therein which by the said act you are enabled to sell and convey, and for any damage or injury which may be sustained by you the said A. B., C. D., &c., by the execution of the said railway works.

Witness our hands, the —— day of ——, A. D. ——.

G. H. } *Directors of the said*
I. K. } *railway company.*

[*Or*, "L. M., *secretary*, *&c.*]

To A. B., Esq., and C. D., Esq., and all other parties claiming satisfaction or compensation for the above-mentioned hereditaments, or any estate, share, interest, or charge in or affecting the same, or for any injury or damage occasioned by the taking of the said hereditaments by the said company, or otherwise by reason of making the said railway, or on account of the execution of the said act, and to all other persons whom it may concern.

(*h*) The following may be the form of the warrant:—

Form No. 21.

[The name of the County] to wit.

Form No. 21. Warrant from the company to the sheriff requiring him to summon a jury. (8 Vict. c. 18, s. 39, post, App., 125).

To the Sheriff of ——,

Whereas, we the —— Company, incorporated by an act of Parliament, intituled [*insert title of special act*], and by the said act authorised to purchase or take for the purposes thereof the lands, tenements, and hereditaments hereinafter particularly mentioned, by a notice in writing, bearing date the —— day of ——, duly given by us in pursuance of the said act, did inform A. B., C. D., &c., that the said lands, tenements, and hereditaments, belonging or reputed to belong to them, [*or*, "some or one of them"], or in which they [*or*, "some or one of them"] claimed some estate or interest, were required to be taken and used by us the said railway company for the purposes of the said act; and that the said company were willing to treat for the absolute purchase of the said lands, tenements, and hereditaments, and of the interest of them the said A. B. and C. D., &c. therein, or which they were by law enabled to sell and convey, and as to the compensation to be made to them the said A. B., C. D., &c., and all parties interested, for the damage or injury that might be sustained by reason of the execution of the railway works. And whereas the said A. B., C. D., &c., have, for the space of twenty-one days after the service of the said notice, failed to state the particulars of their claims in respect of the said lands, tenements, and hereditaments, or to treat with us the said company in respect thereof. [*Or*, "And whereas we the said company and the said A. B. and C. D., &c., have not agreed and cannot agree as to the amount of the purchase-money and compensation as aforesaid,

company of the time and place of holding the inquisi- *Compensation assessed by a Jury.*

to be paid by us to them."] And whereas we the said company, by a notice in writing, bearing date the —— day of ——, duly given by us in pursuance of the said act, did inform the said A. B., C. D., &c., of our intention to cause a jury to be summoned to assess such purchase-money and compensation as aforesaid; and also of the sum of money we are willing to give for the purchase of the said lands, tenements, and hereditaments, and for the damage to be sustained by them by reason of the execution of the said railway works. *Now* we the said —— Railway Company do, by this our warrant, in pursuance of the powers conferred upon us in that behalf by the said act, require you the said sheriff to summon and return a jury of twenty-four indifferent men duly qualified according to law, to be and appear before you the said sheriff at some convenient time and place to be appointed by you, (such time not being less than fourteen nor more than twenty-one days after the receipt by you of this our warrant, and such place not being more than eight miles distant from the lands hereinafter described), in order that you the said sheriff may cause to be drawn in such manner as juries for trials of issues joined in the superior courts are by law required to be drawn, out of the persons so to be summoned, and who shall appear, a jury of twelve men; or if a sufficient number of jurymen do not appear in obedience to the said summons, then that you the said sheriff may return a sufficient number of indifferent men duly qualified as aforesaid of the bystanders or others that can be speedily procured to make up the said jury to the number of twelve, you the said sheriff allowing all parties concerned their lawful challenges against any of the said jurymen according to law; and such jury summoned and drawn shall, upon their oaths, affirmations, or declarations, as the case may be, inquire of and assess and give a verdict for the sum or sums of money to be paid by us the said company to the said A. B., C. D., &c., or other the person or persons interested therein for the purchase of the lands, tenements, and hereditaments hereinafter mentioned, and for the purchase of every estate, share, right, interest, or charge of them the said A. B., C. D., &c., each and every of them, in, upon, or affecting the said lands, tenements, and hereditaments, or which they, any, or either of them are or is by the said act enabled to sell, convey, or release; [*If the lands are to be severed, add the following*:—And also for the sum or sums of money to be paid by us the said company for the damage to be sustained by the owner or owners of the said lands, tenements, and hereditaments, by reason of the severing thereof from the other lands, tenements, and hereditaments of such owner or owners, or otherwise injuriously affecting such lands by the exercise of the powers of the said act of Parliament, or any act or acts incorporated therewith], that is to say, firstly, all that piece or parcel of land &c. situate at a place called ——, in the parish of ——, in the said county, containing by estimation, — A. — R. — P., or thereabouts, which said piece or parcel of land, and premises, are delineated and described on the map or plan and book of reference deposited in the office of the clerk of the peace for the said county of ——, [*or*, all those parcels of land, tenements, and hereditaments mentioned in the

Compensation assessed by a Jury.

tion (*i*); sixthly, the like notice given by the company to the party entitled to compensation (*k*); and, lastly, the in-

schedule hereunto annexed &c., *as in the form No.* 19, *ante*, 184. *The description of the lands should be accurately stated, and it should agree in all respects with the description in the notice to treat.*]

And the said jury shall also in like manner inquire of and assess and give a verdict for the sum or sums of money to be paid by the said company to the said A. B., C. D., &c. [*each and every of them*], and all other parties interested in the said lands, tenements, and hereditaments, &c., for all damage sustained by them or any of them by reason of the exercise, as regards such lands, tenements, and hereditaments, of the powers by the said act vested in the said company (*a*). And the said jury shall further, upon their oaths, affirmations, or declarations, as aforesaid, inquire of, and by their verdict ascertain and settle, all such other matters and things as they may, by virtue of the provisions of the said act, or otherwise, be lawfully required to do.

Given under our common seal this —— day of ——, A. D. ——.

L. S.

(*i*) The following may be the form of this notice:—

Form No. 22.

Form No. 22. Notice from the sheriff to the company, of the time and place of holding the inquisition. (8 Vict. c. 18, s. 41, post, App., 196).

The Sheriff of —— to the —— Railway Company, greeting.

Whereas, by a warrant to me directed, under your common seal, bearing date the —— day of ——, I am required to summon a jury to inquire into and assess the purchase-money and compensation to be paid by you the above-mentioned company to A. B. and C. D., &c. in respect of certain lands, tenements, and hereditaments in the said warrant mentioned. Take notice, that the said inquiry will be held, in pursuance of the said warrant, and of the statute in that case made and provided, on the —— day of —— next, at the house of ——, commonly called or known by the name or sign of ——, in —— street, at ——, in the county of ——, at the hour of —— o'clock in the forenoon.

Dated this —— day of ——, A. D. ——.

By the same sheriff.

L. S.

(*k*) The following may be the form of this notice:—

Form No. 23.

Form No. 23. Notice from the company to the

In pursuance of an act of Parliament, intituled "The —— Railway Act," [*here insert title of the special act*], we the —— Railway Company

(*a*) See 8 Vict. c. 20, s. 6, post, App., 159.

quisition, verdict, and judgment (*l*). There are also cases where the parties interested in lands which have been taken

Compensation assessed by a Jury.

hereby give notice to you, each and every of you, that a jury, to be summoned, impannelled, and returned, according to the provisions of the said act, will attend and appear before the sheriff of the county of ——, at the house of ——, [*describing it*], on the —— day of ——, at the hour of —— o'clock in the forenoon of the same day, then and there to inquire of and assess, and give a verdict for the sum or sums of money to be paid by us the said company, to you the said A. B., C. D., &c., or other the person or persons interested therein, for the purchase of all those, the lands, tenements, and hereditaments mentioned and described in a certain notice, bearing date the —— day of ——, and duly served upon you by us, or for the purchase of the estate and interest of you the said A. B., C. D., &c. therein, or which by the said act you are enabled to sell; and also to assess and give a verdict for the sum or sums of money, to be paid by us, the said company, to you the said A. B., C. D. &c., or other the owners of, and all other parties interested in the said lands, tenements, and hereditaments, for all damage sustained by them by reason of the exercise as regards such lands, tenements, and hereditaments, of the powers by the said act vested in us the said company. And the said jury will, at the place and time aforesaid, inquire of, and by their verdict ascertain and settle, all such other matters and things as they may, by virtue of the provisions of the said act, or otherwise, be lawfully required to do.

party who claims compensation of the time and place of holding the inquisition. (8 Vict. c. 18, s. 46, post, App., 127).

Witness our hands the —— day of ——, in the year of our Lord 18—.

G. H. } *Directors of the said*
I. K. } *railway company.*

"*Or*, L. M., *secretary, or* ['*treasurer*,'] *of the said railway company.*"

To A. B., Esq., and C. D., Esq., and all other parties claiming satisfaction or compensation for the above-mentioned hereditaments, or any estate, share, interest, or charge in, or affecting the same, or for any injury or damage occasioned by the taking of the said hereditaments by the said company, or otherwise by reason of making the said railway, or on account of the execution of the said act, and to all other persons whom it may concern.

(*l*) The following may be the form of the inquisition, &c.:—

Form No. 24.

Form No. 24.

The inquisition, verdict, and judgment. (8 Vict. c. 18, ss. 49, 50, post, App., 127).

—— shire to wit. An inquisition, verdict, and judgment, had, taken, and given at the house of &c., on the —— day of ——, A. D. ——, before me, W. B., Esq., sheriff of the county of ——, pursuant to an act of Parliament intituled &c. [*insert title of special act*], on the oaths of Henry Pitt, &c.

Compensation assessed by a Jury.

for, or are injuriously affected by the railway works, may give a notice to the company, and require them to issue their warrant (*m*).

[*naming the jurors*], indifferent persons, duly qualified to act as common jurymen in the inferior courts here, duly impannelled, summoned, and returned by me the said sheriff, in pursuance of and in obedience to a warrant made and issued under the common seal of the —— Railway Company to me directed and delivered, and hereunto annexed; notice in writing having been heretofore duly given to A. B., C. D., &c. by the said company, according to the said act, that the lands, tenements, and hereditaments hereinafter mentioned were required to be taken and used for the purposes of the said act, and that the said company were willing to treat for the purchase thereof, and for the purchase of the estate, share, right, interest, or charge of them the said A. B., C. D., &c., in, upon, or affecting the same, or which by the said act they were enabled to sell, convey, or release; and, as to the compensation to be made to them for the damage that might be sustained by them by reason of the execution of the said railway works: and they the said A. B., C. D., &c. not having, within the space of twenty-one days and more after the giving of such notice, agreed with the said company, as to the amount of the compensation to be paid by the said company for the purchase of the said lands, tenements, and hereditaments, or for the purchase of the estate, share, right, charge, or interest in, upon, or affecting the same, of them the said A. B. and C. D. therein, or which by the said act they were enabled to sell, release, and convey; and, as to the amount of the compensation to be paid for any damage which might be sustained by them the said A. B. and C. D., &c., by reason of the execution of the said railway works [*or*, "and the said A. B. and C. D., &c. having failed for twenty-one days after the service of such notice to state the particulars of their claims in respect of such lands, tenements, and hereditaments, and to treat with the said company in respect thereof]: and notice in writing having been heretofore duly given to the said A. B. and C. D. &c., by the said company, according to the provisions of the said act, ten days and more before the issuing of the said warrant, of the intention of the said company to issue their warrant, directed to me the said sheriff, to cause a jury to be summoned to inquire of and assess the amount of the purchase-money and compensation to be paid by the said company, as aforesaid, to the said A. B. and C. D., &c., for the purchase of the said lands, tenements, and hereditaments, and in respect of their said estate, share, right, charge, or interest therein, as aforesaid; and also of the sum of money which they the said company were willing to give for the purchase of the said lands, tenements, and hereditaments, and the interest of them the said A. B. and C. D., &c. in such lands, tenements, and hereditaments, and for the damage to be sustained by them by the execution of the said railway works: and, notice in

(*m*) See the forms, No. 6, ante, 162; No. 8, ante, 164; No. 14, ante, 174; No. 16, ante, 175.

Compensation assessed by a Jury.

The company must, as we have seen, give not less than ten days' notice to the party entitled to compensation, of their

writing having been also duly given ten days and more before the said —— day of ——, [*the date of holding the inquisition*], to the said A. B. and C. D., &c., of the time and place of holding this inquiry; which said H. Pitt &c. [*naming the jurors*], being duly sworn to inquire of and concerning the matters mentioned in the said warrant, and thereby directed to be inquired of, assessed, and ascertained by them in manner therein mentioned; and the said A. B., &c., by their counsel, having, at the time and place aforesaid, appeared before me and the said jurors, and having produced evidence before me and the said jurors touching the matter in question; and the said company named in the said warrant having also, by their counsel, appeared, at the time and place aforesaid, before me and the said jurors, but having declined to produce any evidence;—the said jurors aforesaid, upon their oath aforesaid, say, that they do assess and give a verdict for the sum of ——, to be paid to the said A. B. and C. D., &c., by the said company, for the absolute purchase in fee simple in possession, free from incumbrances, of all those pieces or parcels of land, &c. [*describing the premises by referring to a schedule or otherwise*], and also for the purchase of all and every the estate, right, share, interest, or charge of them the said A. B., C. D., &c., each and every of them, in, upon, or affecting the said lands, tenements, and hereditaments, or any part or parcel thereof, or which they the said A. B. and C. D., &c., or any or either of them, are or is, by the said act, enabled to sell, convey, or release; and also as and for compensation for all damage sustained by the said A. B., C. D., &c., any or either of them, by reason of the execution of the said railway works, or by the exercise, as regards such lands, tenements, and hereditaments, of the powers by the said act vested in the said company. [*If the lands are to be severed, add the following*:—(except only compensation for the damage to be sustained by the said A. B., C. D., &c., by reason of the severing of the said lands, tenements, and hereditaments from the other lands of the said A. B., C. D., &c., or otherwise injuriously affecting such other lands by the exercise of the said powers). And the said jurors do, in like manner, upon their oath as aforesaid, assess and give a verdict for the further sum of ——, to be paid to the said A. B., C. D. &c., by the company, by way of compensation for the damage to be sustained by them by reason of the severing of the said lands, tenements, and hereditaments from the other lands of them the said A. B., C. D., &c., or otherwise injuriously affecting such other lands, by the exercise of the powers of the said act.] Whereupon, I, the said sheriff, in pursuance of the said act of Parliament, do pronounce and give judgment for the said purchase-money and compensation so assessed as aforesaid, by the said jurors, amounting together to the sum of ——, to be paid by the said company to the said A. B. and C. D., &c.

In witness whereof, I, the said sheriff, have hereunto set my hand and the seal of my office, and the jurors aforesaid have hereunto set their hands and seals, the day and year first above written. L. S.

Compensation assessed by a Jury.

intention to summon a jury, and in such notice must state what sum they are willing to give for the lands, and for the damage to be sustained (*n*). (*Id.*, s. 38, post, App., 125). If this offer be not accepted, the company issue their warrant to the sheriff of the county in which the lands are situate, or to a coroner, if the sheriff be interested (*o*), requiring him to summon a jury (*p*). (*Id.*, s. 39, post, App., 125). On receipt of the warrant, the sheriff summons a jury of twenty-four qualified persons, and gives notice to the company (*q*) of the time and place appointed for the meeting; (*Id.*, s. 41, post, App., 126); and a like notice must be given by the company to the other party (*r*). (*Id.*, s. 46, post, App., 127). A juryman cannot be summoned, without his consent, more than once in every year. (*Id.*, s. 57, post, App., 129). The sheriff, under-sheriff, or other legal competent deputy, presides at the inquiry (*s*); and the party claiming compensation is to be deemed the plaintiff, and has all such rights and privileges as the plaintiff is entitled to in trials of actions at law (*t*); (*Id.*, s. 43, post, App., 126); and if the party claiming compensation appears, (*Id.*, s. 47, post, App., 127), a jury of twelve persons is drawn in the usual manner. (*Id.*, s. 42, post, App., 126). Either party may request the sheriff to summon witnesses, or to order a view. (*Id.*, s. 43, post, App., 126). The jury and witnesses are sworn. (*Id.*, s. 48, post, App., 127). And if they or the sheriff neglect their duties, they are liable to pay certain

(*n*) See the form, No. 20, ante, 295.

(*o*) See the form of the warrant, No. 21, ante, 296.

(*p*) Any objection to the competency of the sheriff or other presiding officer, ought to be taken at the hearing of the inquiry. *Corrigal* v. *The London and Blackwall Railway Company*, 5 Man. & Gr. 247.

(*q*) See the form of this notice, No. 22, ante, 298.

(*r*) See the form of this notice, No. 23, ante, 298.

(*s*) See also the Interpretation Clause, tit. "Sheriff," post, App., 118.

(*t*) As to the plaintiff's right to begin; and whether the sheriff has power to examine into the preliminary matters, as to notices &c., see *Taylor* v. *Clemson*, 2 Q. B. 999, 1019.

penalties. (*Id.*, ss. 44, 45, post, App., 126, 127). Either party may have a special jury; (*Id.*, ss. 54, 55, post, App., 128); and, by consent, more than one inquiry may be had before the same special jury. (*Id.*, s. 56, post, App., 129).

Compensation assessed by a Jury.

If the inquiry relates to the value of lands to be purchased, and also to compensation for injury done, or to be done, to the lands held therewith, the jury must deliver their verdict separately (*u*) for the sum to be paid in respect of the lands, and for the sum to be paid as compensation for damage; (*Id.*, s. 49, post, App., 127); and the sheriff then gives judgment for the purchase-money or compensation so assessed (*x*), and the verdict and judgment is signed by the sheriff (*y*), and, being so signed, is afterwards kept by the clerk of the peace among the records of the county, and is deemed a record; and the same, or a copy, is good evidence in all courts and elsewhere (*z*); and all persons may inspect such verdicts and judgments, and obtain a certified copy, or extracts thereof. (*Id.*, s. 50, post, App., 127).

(*u*) These words are directory only, and enable the company or the claimant at the meeting, to call upon the sheriff to keep the evidence distinct, and to find and adjudicate a separate sum in respect of each claim. *Corrigal* v. *The London and Blackwall Railway Company*, 5 Man. & G. 249; *Ex parte The London and Greenwich Railway Company*, 2 Ad. & E. 678; S. C. 4 Nev. & Man. 450; *R.* v. *Sheffield Railway Company*, 11 A. & E. 194.

(*x*) The jury may find that the claimant has sustained no damage, *R.* v. *The Lancaster and Preston Junction Railway Company*, 14 Law J., (Q. B.), 84.

(*y*) In *Taylor* v. *Clemson*, 2 Q. B. 1028, *Maule*, J., suggested that an inquisition, like a conviction, may be drawn at any time. The inquisition should be signed in the name of the sheriff, although the inquiry be held before the under-sheriff. *Stroud* v. *Watts*, 15 Law J., (C. P.), 196.

(*z*) Where a railway company relied upon a verdict, whereby compensation was assessed for lands taken by them, in answer to an action of trespass; and it appeared that the inquisition had never been recorded, parol evidence was allowed to be given of the finding of the jury. *Manning* v. *The Eastern Counties Railway Company*, 12 Mee. & W. 237, ante, 248.

Compensation assessed by a Jury.

If the jury give a verdict for a greater sum than the sum previously offered by the company, all the costs of the inquiry fall on the company (*a*); but if for the same, or a less sum, or if the owner of the lands fail to appear at the inquiry, the costs are apportioned between the parties (*b*). (*Id.*, s. 51, post, App., 127). In cases of difference, the costs are settled by one of the Masters of the Queen's Bench; and such costs include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury taking the inquiry, the attendance of witnesses, the employment of counsel and attornies, recording the judgment and verdict thereon, and otherwise incident to such inquiry. (*Id.*, s. 52, post, App., 128). Costs are recoverable by distress; and if payable by the party entitled to

(*a*) The inquisition need not shew on its face by whom the costs are to be paid. Where a company were liable to pay costs to be recoverable before a justice, if the same sum or a larger sum than that previously offered were awarded to the party whose lands were taken, *Williams*, J., observed, on this point, "It is suggested that the inquisition ought to shew the facts which ascertain the liability to costs; but it is obvious that that is not so, because the costs are not a matter for the consideration of the jury: they are recovered by a proceeding quite independent of the inquiry, and there is no reason that any thing respecting them should appear by the inquisition." *R.* v. *The Trustees of Swansea Harbour*, 8 A. & E. 439.

(*b*) Quære, whether the statute ought not to have provided for the payment of the claimant's costs in cases where the company have not previously made *any* offer of compensation. The company may perhaps altogether refuse to recognise a claim for compensation, and the claimant would then be entitled to require the company to issue a warrant under the provisions of stat. 8 Vict. c. 18, s. 68, (post, App., 130); and, quære, whether in such a case it is incumbent on the company to make an offer of a certain sum for compensation. Sect. 38 (post, App., 125) seems to be applicable to all cases where the company may be required to issue a warrant. It is quite clear that the power to recover the costs of the inquiry must be given by the statute, expressly. In *Corrigal* v. *The London and Blackwall Railway Company*, 5 Man. & G. 219, it was decided that a claimant was not entitled to the costs of an inquiry, because the act had only provided for three classes of cases, neither of which included the claimant's case. See also *R.* v. *The London and Blackwall Railway Company*, 4 Railw. Cas. 119.

compensation, they may be deducted and retained by the company, or recovered by distress. (*Id.*, s. 53, post, App., 128). A party is also, as we have seen, *ante*, 160, entitled to have compensation assessed by a jury, although the company may not have given him notice of their intention to take his lands. (*Id.*, s. 68, post, App., 130).

Compensation assessed by a Jury.

The foregoing is an outline of the contents of the 8 Vict. c. 18, with respect to the assessing of compensation by the verdict of a jury; and, by referring to the various sections of the statute, it will be seen how the proceedings are to be conducted. And here it may be observed, that one of the many advantages which will arise by the introduction of the Lands Clauses Consolidation Act is, that, in future, all proceedings, in assessing compensation by juries under special railway acts, will be uniform in their character. Many decisions are to be found in the books on the construction of provisions similar to the above, contained in special railway acts; but these provisions, although similar in their general character, differ from each other in particulars of greater or less importance, and, consequently, no general rules could be extracted from the decided cases, for the attainment of one general course of practice in such proceedings. And although many of these decisions are no longer applicable, some useful points may be extracted.

In the first place, it is necessary to point out a very important provision in the new act. It is enacted, that "No proceeding in pursuance of that or the special act, or any acts incorporated therewith, shall be quashed or vacated for want of form, or be removed, by certiorari or otherwise, into any of the superior courts" (*c*). The effect of this enactment is, that the inquisition cannot be removed by certiorari into the

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(*c*) 8 Vict. c. 18, s. 145, post, App. 153; 8 Vict. c. 20, s. 156, post, App. 195.

ion as- Jury.

If the jury give a verdict for being thu- previously offered by the c the inqui- quiry fall on the compan relates to sum, or if the owner ion what- quiry, the costs ar being in- (*Id.*, s. 51, post, A se of *The* are settled by (f) may and such c laid penses in an in- the jury was, that the emp and for which the jury m compensation, were situate more rds beyond the line of deviation. It was unsel in support of the writ, that, although as taken away by the special act, yet, as the re altogether illegal, and there was a total sdiction, the certiorari would lie. On the other ntended, that, if the proceedings were merely certiorari was unnecessary, and the parties entering iable in trespass.

art of Queen's Bench refused to grant the certio- it appears that the learned Judges adopted the urged by the counsel for the defendants. *Little-* observes, "The parties applying are not without for they may bring trespass, if the proceeding void. It is argued that there will be a primâ faci

(e) It has been decided that this section is applicable to inquisitions. *R. v. The Sheffield Railway Company*, 11 A. & E. 194. See also *R. v. The Justices of Lindsey*, 14 Law J. Mag. C. 151.; 3 Dowl. & L. 101. *R. v. The Justices of the West Riding of York*, 5 T. R. 629; *R. v. The Sheffield Railway Company*, 11 A. & E. 194; *R. v. The Chelten Commissioners*, 1 Q. B. 467.

(f) 11 A. & E. 202. n.; S. C. 2 Railway Cases, 99.

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...n, if the proceedings be not quashed. I doubt ...t would be so in any case; but clearly it ...so where there has been a deviation from ...n."

...rs that a writ of certiorari was refused, ...the party had a sufficient remedy by ...assumed that the affidavits shewed ...no jurisdiction to assess compensation ...lands which were taken for the purposes of the railway. But, in the subsequent case of *The Queen* v. *The Sheffield and Manchester Railway Company* (*h*), the Court took occasion to repeat the general proposition, that, whenever a want of jurisdiction appeared, it was competent for the Court of Queen's Bench to interfere by certiorari, although the writ be taken away by the express words of a statute. Lord *Denman*, C. J., says: "I think the argument on the part of the company has been pressed to an alarming extent. I hear, with much surprise, that, in the case of a court appointed to try questions of 40*s.* damages, under an act of Parliament containing a clause similar to the one in question, if that court should think fit to try a case in which 40,000*l.* was in question, our jurisdiction would be taken away, by the judge making a false return. This Court holds jurisdiction over all inferior courts; and where certiorari is taken away by an act of Parliament, it must be in the terms of that act, and for something done

(*g*) The party whose lands were taken, afterwards brought ejectment against the company. But the Court of Exchequer decided that the special act authorised the company to make such a deviation as included the lands in question. See *Doe* d. *Payne* v. *The Bristol and Exeter Railway Company*, 6 M. & W. 320; post, 312; S. C., 2 Railway Cases, 75. It was not suggested by the counsel for the defendants that the inquisition was a bar to the action.

(*h*) 1 Railway Cases, 537; S. C., 11 A. & E. 194.

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in pursuance of it. The fair import of *Regina* v. *The Bristol and Exeter Railway Company* is, that, where the act done is locally and visibly out of the jurisdiction, it is then the act of a stranger; and we cannot consider it any court at all, but leave the party to their remedy by an action of trespass; as, if an inquisition were held in Bedfordshire, to assess the value of lands in another county; but this is something sought to be shewn without the jurisdiction by extrinsic evidence, and that, too, where there is a clause in the act which, by enacting that it shall be a record, makes the sheriff's return alone evidence; and therefore a wrong-doer would be protected, if he could induce the sheriff to make a false return (*i*)." And *Patteson* and *Coleridge*, Js., without going to the extent of overruling *The Queen* v. *The Bristol and Exeter Railway Company*, intimated that it was not necessary to justify every thing that might have been said by the court in that case.

It may, therefore, perhaps be assumed that the rule now applicable to the removal of inquisitions is that which has been already laid down. The application of that rule is, however, not unattended with difficulties. A very learned judge (*k*) observed, in a late case, "Many attempts have lately been made—indeed there is a perpetual endeavour to get rid of clauses which take away certiorari, by impugning the jurisdiction. Such attempts we ought carefully to watch, otherwise the clauses would be rendered nugatory." And the Court of Queen's Bench, acting on this principle, have decided, that where an inquisition had been taken before a clerk to the under-sheriff, and an assessor appointed, *pro hâc vice*, by the sheriff, they not being persons specially named in the act, there was no ground for

(*i*) See post, 323.

(*k*) *Patteson*, J., in *R.* v. *The Cheltenham Commissioners*, 1 Q. B. 478.

granting a certiorari (*l*), inasmuch as this deviation from the requisites of the act was a mere irregularity, and not an excess of jurisdiction; and the Court intimated, that, as the proceeding duly originated in a warrant delivered to the sheriff, a subsequent act irregularly done was not enough to destroy the jurisdiction. If it were, then the examination of a single witness, without swearing him, would be sufficient to vitiate the inquisition.

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So, where the certiorari was taken away, and the company issued a warrant to the sheriff, requiring him to assess compensation to the claimant, "for damages (if any) which shall have been done by reason of the execution of the works," it was contended that the warrant was void, and that therefore the jurisdiction never attached; but the Court refused a certiorari, as the warrant (though it ought not to have contained the words "if any") gave jurisdiction (*m*).

It has also been decided, that a party who seeks to set aside an inquisition must come into court with clean hands, for he may so conduct himself as to be held incompetent to take an objection to the inquisition, which would be perfectly good in itself under ordinary circumstances. This rule has been applied in a case where a party treated land as his own freehold when a negotiation for purchase was going on; and he was held to be incompetent to set up as an objection that the lands belonged to his wife, and were copyhold, and that the inquisition awarded no compensation to the parties who held these interests in the land. He was also held to be estopped from objecting, that, by the inquisition, the company were directed to commit a trespass, by making a hedge on other

(*l*) *R.* v. *The Sheffield Railway Company*, 11 A. & E. 194, 1 Railw. Cas. 537. See also *Corrigal* v. *The London and Blackwall Railway Company*, 5 Man. & G. 247.

(*m*) *R.* v. *The Lancaster and Preston Junction Railway Company*, 14 Law Journal (Q. B.) 84.

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land belonging to the complainant, it not being positively stated in the affidavit that less compensation had been given to him in consequence; and it appearing, that, when he demanded compensation, he had required a certain sum to be given to him, and also made it a condition that the company should erect the fence in question (*n*).

With respect to the form of the inquisition, it is to be observed, that, inasmuch as there is to be an extraordinary jurisdiction exercised by the sheriff, everything which is made preliminary by the act of Parliament ought to be set out on the face of the inquisition (*o*).

This question as to the necessity of shewing jurisdiction on the face of the inquisition, was much discussed in a late case in Error (*p*); and, by referring to this case, all the authorities on the subject will be found collected and arranged in admirable order. The Court, in delivering the judgment, said, "The authority given by the statute to the railway company to take the lands of individuals for the purposes of the act, where it is exercised adversely, and not by consent, is undoubtedly an authority to be carried into effect by means unknown to the common law. And it is, therefore, contended, on the part of the plaintiff, that the same rule will apply to these proceedings which is held to apply to all other inferior jurisdictions, that, unless sufficient appears upon the face of the proceedings themselves to shew that the jurisdiction exists, such proceedings are

(*n*) *R.* v. *The Committee for South Holland Drainage*, 8 A. & E. 429.

(*o*) Per *Parke*, B., in *Doe* d. *Payne* v. *The Bristol and Exeter Railway Company*, 6 Mee. & W. 339. See also *R.* v. *Bagshaw*, 7 T. R. 363; *R.* v. *The Mayor of Liverpool*, 4 Burr. 2244; *R.* v. *The Trustees of Norwich Roads*, 5 A. & E. 563, S.C. 1 N. & P. 32; *R.* v. *South Holland Drainage*, 8 A. & E. 429; *R.* v. *Croke*, 1 Cowp. 26; *R.* v. *Manning*, 1 Burr. 377.

(*p*) *Taylor* v. *Clemson*, 2 Q. B. 978, S. C., 2 Gale & D. 346.

altogether void. Admitting such to be the rule of law, and not further relying on the special finding by the jury, that all which was necessary to give jurisdiction under the statute, did really and in fact take place, than to observe that the whole objection is confined to the face of the proceedings themselves, the question is, whether, either expressly or by necessary intendment, the proceedings do of themselves shew that they were warranted by the statute. And we are of opinion, that, upon fair and necessary intendment, the jurisdiction appears upon the proceedings themselves."

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This case decided, that, if the warrant to the sheriff is annexed to the inquisition, they may be considered as one entire proceeding; and any deficiency existing in the one may be aided by reference to the other, on the ground that as no particular form is prescribed by the statute, it is sufficient if the jurisdiction is substantially made apparent upon the face of the documents, or may be inferred therefrom (*q*).

But, although the warrant may be thus referred to, it will probably be deemed desirable, in all cases, to shew, on the face of the inquisition itself, that the proper notices were given by the parties upon whose application the warrant to the sheriff was issued (*r*). It cannot, however, be objected, that it does not appear, on the inquisition, that the whole of the capital had been subscribed for, although, by the terms of the statute, the compulsory powers to take lands could not be resorted to until such a subscription was made (*s*). Nor need it appear that a certificate of two jus-

(*q*) See *Taylor* v. *Clemson*, 2 Q. B. 978; S. C., 2 Gale & D. 346.

(*r*) See ante, 158; also the form of the Inquisition, No. 24, ante, 299. If the party who demands the compensation originates the proceeding under sect. 68 of stat. 8 Vict. c. 18, post, App., 130, it will be easy to adapt the form to the facts of the particular case.

(*s*) *Doe* d. *Payne* v. *The Bristol and Exeter Railway Company*, 6 Mee. & W. 329; 2 Railw. Cases, 75, S. C.

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tices had been obtained, to certify that an erroneous description of lands in the book of reference proceeded from mistake (*t*).

The writ of certiorari being thus taken away, the objections, which may be raised to the proceedings before the sheriff, are limited, as already stated, to those cases where it appears that the proceeding relates to some matter over which the sheriff has no jurisdiction, or unless the proceeding itself is impeached as being invalid on the ground of malversation.

We shall now say a few words on the mode of proceeding to apply for a certiorari (*u*). And, first, the statutory regulations, limiting a time for issuing writs of certiorari and requiring notice to be given of application for them, and recognisance to be entered into before allowance, do not apply to inquisitions or other proceedings before sheriffs (*x*).

It is extremely important that the affidavits should be carefully prepared (*y*). If any important fact be stated in uncertain language, the Court will refuse the writ. And any failure of this kind is the more serious in its results, in consequence of a rule of practice, which, if not universal and inflexible, is as nearly so as possible; *i. e.* that the Court will

(*t*) *Taylor* v. *Clemson*, 2 Q. B. 978; S. C., 2 Gale & D. 346.

(*u*) It seems, the rule to shew cause why the writ should not issue may be directed to the Company, although the inquisition be out of their custody. *R.* v. *Manchester and Leeds Railway Company*, 1 Per. & Dav. 164; but see S. C., 8 A. & E. 424, note (*a*).

(*x*) See 5 Geo. 2, c. 19, s. 2; 13 Geo. 2, c. 18.

(*y*) The affidavits in support of the application for the writ must be intitled "In the Queen's Bench" only, and sworn in Court, before a judge or commissioner for taking affidavits in the Queen's Bench. The certiorari is directed to the parties taking the inquisition, adapted to the particular case, and describing the inquisition as in the rule of Court, and is to be issued as other writs on the Crown side. *Corner's Practice*, 91.

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not allow a party to make a second application for the writ, if he has previously applied to the Court upon insufficient affidavits (*z*).

It will, therefore, be proper that all defects in the proceedings should be positively sworn to, and, if possible, a copy of the inquisition should be annexed; or, if that cannot be procured, the party making the affidavit should swear directly to his information and belief, as to its contents.

Thus, in *The Queen* v. *The Manchester and Leeds Railway Company* (*a*), a party sought to set aside an inquisition on the ground that some of the lands taken by the company, and for which damages were given by the inquisition, were not included in the schedule annexed to the railway act, neither had two justices certified that the omission proceeded from mistake, and that, consequently, the company had no right to take the land; and the application was founded on an affidavit made by the owner of the lands. The Court refused the application for a certiorari in consequence of the defective mode of stating the objections to the inquisition. Lord *Denman*, C. J., said, "We should issue the certiorari, if it distinctly appeared that the jury had comprehended in their verdict anything which they were not authorised to include. But we cannot assume that the fact is so, unless the affidavits positively state it. They should either set out the inquisition, or shew that the deponent has no copy, and then distinctly state that he is informed of, and believes, the facts raising the objection. Here all that appears as to the inquisition is, that the party 'objects' that certain deficiencies exist. It is said that this is an objection upon oath; but suppose he had actually said, 'I

(*z*) *Bodfield* v. *Padmore*, 5 A. & E. 785, n. (*a*); *R.* v. *Manchester and Leeds Railway Company*, 8 A. & E. 413; *R.* v. *Pickles*, 3 Q. B. 599, n. (*a*).

(*a*) 8 A. & E. 413.

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tices had been obtained, to certify [illegible] form of scription of lands in the book of [illegible] ity of the mistake (*t*). [illegible] ssess the

The writ of certiorari being [illegible] all that tions, which may be raised [illegible] ks of re- sheriff, are limited, as alr[illegible] state- it appears that the proce[illegible] were which the sheriff has n[illegible] ible. It should ing itself is impeach[illegible] have not certified; malversation. [illegible] the power. To assert,

We shall now [illegible] fact that the statute authorises ing to apply for [illegible] ugh; it should be stated how gulations, li[illegible] disclaim the principle, that we are to and requiri[illegible] bring up the inquisition, on the ground and recog[illegible] may be defects; we must clearly see not appl[illegible] which will bring the defects before us." sheriff- [illegible] important to remember that any defect or [illegible] may be shewn by affidavit. The rule fi[illegible] very clearly laid down in a late case (*b*); [illegible] substitution of the word "sheriff" for "magis- [illegible] judgment of the Court of Queen's Bench will [illegible] the subject now under consideration. "As [illegible] upon ex concessis, to see whether the case [illegible] the jurisdiction of the magistrates, it is con- [illegible] affidavits are receivable for the purpose of [illegible] they acted without jurisdiction; and this is, [illegible] true, taken literally: the magistrates cannot, as [illegible] said, give themselves jurisdiction merely by their [illegible] affirmation of it. But it is obvious that this may have [illegible] in the one it is true, in the other, on sound prin- [illegible] and on the best considered authority, it will be found [illegible] Where the charge laid before the magistrate, as

(*b*) *R. v. Bolton*, 1 Q. B. 66.

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mation, does not amount in law to the
he statute gives him jurisdiction, his
by his conviction in the very terms
il to give him jurisdiction; the
face of the proceedings, all
, the charge being really
ated it in drawing up the pro-
ey would appear to be regular, it would
to the defendant to shew to us by affi-
e real charge was, and, that appearing to have
sufficient, we should quash the conviction. In both
cases a charge has been presented to the magistrate,
ver which he had no jurisdiction; he had no right to entertain the question, or commence an inquiry into the merits, and his proceeding to a conclusion will not give him jurisdiction. But, as in this latter case we cannot get at the want of jurisdiction but by affidavits, of necessity we must receive them. It will be observed, however, that here we receive them, not to shew that the magistrate has come to a wrong conclusion, but that he never ought to have begun the inquiry. In this sense, therefore, and for this purpose, it is true that affidavits are receivable. But, where a charge has been well laid before a magistrate, on its face bringing itself within his jurisdiction, he is bound to commence the inquiry: in so doing he undoubtedly acts within his jurisdiction; but, in the course of the inquiry, evidence being offered for and against the charge, the proper, or, it may be, the irresistible conclusion to be drawn may be, that the offence has not been committed, and so that the case in one sense was not within the jurisdiction. Now, to receive affidavits for the purpose of shewing this, is clearly in effect to shew that the magistrate's decision was wrong if he affirms the charge, and not to shew that he acted without jurisdiction, for they would admit that, in every stage of the in-

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quiry up to the conclusion, he could not but have proceeded; and that, if he had come to a different conclusion, his judgment of acquittal would have been a binding judgment, and barred another proceeding for the same offence. Upon principle, therefore, affidavits cannot be received under such circumstances. The question of jurisdiction does not depend on the truth or falsehood of the charge, but upon its nature: it is determinable on the commencement, not at the conclusion, of the inquiry; and affidavits, to be receivable, must be directed to what appears at the former stage, and not to the facts disclosed in the progress of the inquiry."

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Having thus endeavoured to point out what defects in the inquisition may still be taken advantage of by certiorari, and the mode of applying for the writ, we shall turn to a different, but equally important branch of our inquiry.

It may happen that the proceedings taken on the inquisition before the sheriff, are strictly regular in form and substance, and yet, through the perverseness or mistake of jurymen, or some other similar miscarriage, gross injustice may be done in deciding the question of compensation submitted to the jury. In such a case, it is evident that certiorari will not lie to remove the inquisition, inasmuch as the writ is expressly taken away by the statute, and there is no want of jurisdiction, or any malversation on the part of the presiding officer (*c*).

Is, then, the party aggrieved without any remedy? Upon this important question a late case would be expressly in point, if the Lands Clauses Consolidation Act had been framed in the same language as the special act, in the case referred to. In *The Queen* v. *The Eastern Counties*

(*c*) See ante, 306.

Railway Co. (*d*), an application was made for a mandamus commanding the defendants to shew cause why they should not issue a precept to the sheriff to summon a jury to assess damages to one Finch. It appeared from the affidavits that Finch was tenant from year to year of premises near Chelmsford; that the fee-simple of a portion of those lands was purchased for the purpose of constructing the railway thereon; and that the company also temporarily used a portion of the remainder of the land, by passing to and fro, with carts, horses, and workmen, as they were empowered to do under the special act. Finch having claimed compensation, a precept was issued by the company to the sheriff, to empannel a jury "to assess satisfaction, recompense, or compensation, for damage before that time done and sustained by the claimant in and about the lands now or formerly in his occupation, &c., by reason of the execution of any of the works by the said acts authorised, at, upon, or near to the said lands, or for the future, temporary or perpetual, or for any recurring damage to be done to, or sustained by him as aforesaid." At the trial, Finch proposed to give evidence of the damage done to the growing crops, by the construction of the railway; and also of damage done by the temporary user of a portion of his land; and he offered evidence to shew that a temporary road had been made over his meadow, destroying the pasturage, but that the meadow had, in other respects, always remained under his control. The under-sheriff, however, rejected this evidence, upon the ground, that, by the act, authority was given to justices to award damages in respect of the temporary occupation of any land. It was urged that this provision was not applicable, as there had not been a tem-

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(*d*) 2 Dowl., N. S., 945; S. C., 12 Law Journ., Q. B., 271; 3 Railw. Cases, 466.

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porary occupation, but a mere user of the land; but the presiding Judge withdrew this branch of the case from the consideration of the jury. A further objection was raised that the verdict was against the evidence. Finch had originally claimed £542; by his witnesses he proved damage to the amount of £411. The company, by the witnesses called for them, shewed that the damage was 152*l.* 10*s.*; but the jury, nevertheless, awarded only £49.

Upon these facts it was contended, that, if the Court saw that obvious injustice had been done, it would not hesitate to put a party in a position to maintain his rights.

After taking time to consider the question, *Coleridge*, J., delivered the following judgment:—"This was an application for a rule, calling upon the Eastern Counties Railway Company to shew cause why a writ of mandamus should not issue, commanding them to issue a precept to the sheriff to summon a jury, to assess damages for injury alleged to have been sustained by reason of the works of the company's railway. It appeared, that, in point of fact, such a precept had already issued, and that a jury had sat under it, to assess damages in respect of all the causes of damage, for which compensation is now sought to be obtained, and that they returned a verdict for the sum of £49. It is said, that this is a sum grossly under the amount which the party is entitled to claim; that he proved damage to the amount of nearly £500, and the insufficiency of the verdict is attributed to two causes: one, that the sheriff excluded one entire set of damages from the consideration of the jury, on the ground that they were properly recoverable under a particular section of the company's act before a justice; another, that although the claimant proved a much larger amount of damage than that found, the jury, from some personal cause, chose to give a verdict for an inadequate amount. It was admitted, that a direct motion for a new

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trial could not be made, and, no doubt, that was a proper admission; for, the proceeding is the creature of the act of Parliament; and the section of the act, by which it is directed that such a proceeding shall be had, makes the verdict final; but, even if this be not so, I am at a loss to see what machinery this Court has to direct a new trial. But it was said, that the Court might direct a second precept to issue. It appears to me, however, that, if I acceded to such a proposition, I should only be doing a thing indirectly, which cannot be done directly. If a mandamus should go, the return would be that a precept has been already issued, and the only answer to such a return would be 'Yes! but justice has not been done under that precept;' so that, in point of fact, it would still come to the same thing, that the Court would be called upon to grant a new trial. I am informed that a like application has been made in the full Court in another case, and that it was refused. I do not know whether injustice has been done or not; but, even if it has, I have no power to interfere, and no rule, therefore, can go in this case."

The author has not succeeded in finding any report of the case mentioned by the learned Judge; and, therefore, it only remains to point out the differences already referred to, which exist between the special act in *Finch's case*, and the Lands Clauses Consolidation Act. By the former, it is enacted, that the verdict and judgment thereon "*shall be binding and conclusive to all intents and purposes upon all corporations and persons whatsoever* (*e*). In the latter act the words of the statute are as follows (*f*): "The sheriff, before whom such inquiry shall be held, shall give judgment for the purchase-money or compensation assessed by such jury, and the verdict and judgment shall be signed by

(*e*) This appears in the report in 12 Law Journ., Q. B., 271.

(*f*) See 8 Vict. c. 18, post, App., 127.

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the sheriff, and, being so signed, shall be kept by the clerk of the peace among the records of the general or quarter-sessions of the county in which the lands, or any part thereof, shall be situate, in respect of which such purchase-money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same, or true copies thereof, shall be good evidence in all courts and elsewhere."

It therefore appears, that, in the Consolidation Act, the Legislature seems purposely to have omitted the very expressive language which is to be found in The Eastern Railway Company's Act, as also in many other special acts passed previously to the 8 Vict. c. 18. Whether the omission will enable persons aggrieved to obtain a new trial (*g*), or other remedy, under circumstances similar to those detailed in the case above referred to, is a question which can only be satisfactorily determined by a judicial decision.

It seems to be a peculiar anomaly, that a new trial may be had to correct any miscarriage which may occur in trials at Nisi Prius, where the judges of the superior courts preside, whilst the very important questions which arise in

(*g*) The Lands Clauses Consolidation Act also differs from ordinary special Railway Acts in another particular, inasmuch as s. 43 enacts, "that the sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law." It may, perhaps, be suggested, that these words, if understood in an extended sense, would entitle the claimant to a new trial; but as *Coleridge*, J., observed, in *Finch's case*, the Court of Queen's Bench possesses no machinery to direct a new inquiry; and, further, as the statute does not proceed to declare that the Company shall have the rights and privileges of defendants, such a construction of the statute would give an advantage to the party claiming compensation. Where the sheriff improperly refused to proceed on an inquiry, and the claimant afterwards obtained a mandamus, it has been decided that the Company were not liable to pay the costs incurred by supporting the decision of the sheriff. *R.* v. *The Sheriff of Middlesex*, 5 Q. B. 365; 3 Railw. Cases, 396.

compensation cases are subject to no further inquiry or supervision, provided the sheriff had jurisdiction to enter upon the inquiry, and there was no malversation on the part of the presiding officer.

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The importance of the subject seems to justify a few further observations on the effect of the language which is retained in the Lands Clauses Consolidation Act, *i. e.* that the verdict and judgment, when signed, "shall be deemed records." The learned judges appear to have felt considerable difficulty in putting a construction on the statute which first introduced this novel provision (*k*).

In an early case (*l*), an application was made to compel a company, by mandamus, to pay the amount of compensation, where the verdict and judgment had been duly inrolled at the sessions; and it was contended that the remedy was on the record, and that a writ of mandamus was therefore inapplicable. *Patteson*, J., observes, "If there be a specific remedy for this sum, we cannot grant the mandamus. Now, the court of quarter sessions is to give judgment for the sum assessed by the jury, which judgment is to be conclusive; and the clerk of the peace is to sign the verdicts and judgments, which are to be registered and to become records. It seemed to me, at first, that, if these were judgments of record, they might be enforced like judg-

(*k*) By some of the earlier statutes no conveyance appears to have been necessary to vest lands in a company, after the compensation was assessed, and the inquisition recorded with the clerk of the peace. See *Bruce* v. *Willis*, 11 A. & E. 463. By other statutes the conveyances of the lands were required to be enrolled at the sessions; *R.* v. *The Leeds and Liverpool Canal Company*, *Id.* 316; but under the provisions of the 8 Vict. c. 18, the legal title of the Company to the lands taken under the compulsory powers, does not seem to be complete, until a conveyance has been executed. See sect. 75, post, App., 133.

(*l*) *R.* v. *The Nottingham Old Waterworks Company*, 6 A. & E. 355.

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ments of other courts, by the process of the court itself, if it had any process proper for the purpose, and, if not, by action of debt. But, on looking to the act, I doubt whether such a consequence can be admitted. These are not the ordinary records of the quarter sessions; and I never heard of an action on a record of this sort."

And the same learned Judge, in a subsequent case (*m*), says, "As to what fell from me during the argument in the present case, respecting the effect of the inquisition, considered as a judgment, I merely wished to inquire whether, if it have the effect of a judgment of a court of record, error would not lie, and a certiorari be excluded. But I think that, in fact, this cannot be considered as a judgment. The section is drawn very loosely; but it does not, as far as I can understand it, give these proceedings an effect analogous to that of judgments of a court of record."

So, the late learned *Littledale*, J., says, in another case (*n*), "It is said, that, because this inquisition is to be kept among the records of the quarter sessions, it ought, as the record of an inferior court, to set forth everything which was necessary to give jurisdiction. But the enactment is merely directory, that the judgment, having been given, shall be kept among the records of sessions; and, as to the judgment itself, nothing is prescribed, except that the jury shall ascertain the sum to be paid for purchase or recompense, and the justices shall accordingly give judgment for such purchase-money or recompense so to be assessed."

It therefore appears that the inrolment of the verdicts and judgments with the clerk of the peace does not clothe them with the character of records for all purposes.

(*m*) *R.* v. *The Manchester and Leeds Railway Company*, 8 A. & E. 428.

(*n*) *R.* v. *The Trustees of Swansea Harbour*, 8 A. & E. 448; S. C., 1 Per. & D. 512.

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In a subsequent case (*o*), it was, however, said, by Lord *Denman*, C. J., and *Patteson*, J., that the effect of the record of the inquisition and judgment would be to operate as a conclusive bar in any action which might be brought to recover the lands.

The reader will observe, that in all the foregoing cases the special act provided that the verdict and judgment "should be binding and conclusive to all intents and purposes;" and that, when deposited with the clerk of the peace, they should be deemed records "to all intents and purposes whatsoever." As these words are omitted in the 8 Vict. c. 18, a strong inference seems to arise that the Legislature did not intend that the verdicts and judgments, when inrolled, should of themselves be binding or conclusive (*p*); or that they are to be deemed records in the ordinary sense of the term; and it is submitted that the language used in the 8 Vict. c. 18, will be sufficiently carried into effect, if it be construed to mean that the verdict and judgment, when inrolled, shall be deemed the faithful record of the proceedings which actually took place before the sheriff.

On the mode of recovering money awarded as compensation.

Having thus shewn how the inquiry before the sheriff is to be conducted, and suggested the various modes of

(*o*) *R.* v. *The Sheffield Railway Company*, 11 A. & E. 194. But see also the dictum of *Littledale*, J., in *R.* v. *The Bristol and Exeter Railway Co.*, 11 A. & E. 204. It is also worthy of remark, that, in *Doe* d. *Peyne* v. *The Bristol and Exeter Railway Co.*, 6 Mee. & W. 320, the counsel for the defendants did not contend that the inquisition was final; and in *Corrigal* v. *The London and Blackwall Railway Company*, 5 Man. & G. 219, the counsel for the plaintiff do not appear to have relied upon the demurrer to the fourth plea, on the ground that no proof except the record could be given.

(*p*) It has already been remarked that the statute requires a conveyance to be made to perfect the title of the Company to lands taken under the compulsory powers of the act. See note (*k*), ante, 321.

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correcting any irregularity which may have arisen in the course of the proceedings, we will now suppose that the question as to the amount of the compensation has been finally decided, and that nothing remains but to recover it from the company. We shall therefore proceed to consider what remedies are open to the party entitled to receive the money awarded by the verdict of the jury.

This question was very much discussed in the courts of law when it first became necessary to provide a remedy to recover compensation, under some of the earlier special railway acts. Some of these acts were altogether silent as to the mode in which the money awarded should be recovered. In other instances it was enacted, as has been already shewn (*r*), that the inquisition, verdict, and judgment should be inrolled by the clerk of the peace, and should be deemed records to all intents and purposes. The question soon arose, whether the proper mode of recovering money awarded as compensation was by action of debt—on the case—or debt upon the statute, or by an action of debt as upon a judgment of record,—or whether the only remedy was by indictment. All these modes of proceeding were suggested in an early case, as an answer to an application made for a mandamus to compel a company to pay a sum of money awarded as compensation. The Court of Queen's Bench, without determining that one or more of the above remedies might not exist, determined, that, in the absence of any other clear remedy, they ought to issue a mandamus; and this was the mode of proceeding usually adopted to enforce the payment of compensation-money (*s*).

But the Court of Common Pleas has recently decided

(*r*) Ante, 321.

(*s*) *R.* v. *The Nottingham Old Waterworks Company*, 6 A. & E. 355; *R.* v. *Trustees of Swansea Harbour*, 8 A. & E. 439; *R.* v. *The Deptford Pier Company*, 8 A. & E. 910; *R.* v. *The Great Western Railway Company*, 6 Q. B. 72, n. (*d*).

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that an action of debt may be brought on an inquisition and verdict, and this proceeding will, it appears, for the future supersede the old remedy by mandamus (*t*): and it seems that a count may be added in the declaration, to recover any costs attending the inquiry, which the party may be entitled to receive (*u*). A more summary remedy is, however, provided by the statute to obtain the costs; inasmuch as they are made recoverable from the company by distress, if not paid within seven days after demand (*x*). The company may also retain any costs to which they are entitled, out of the compensation-money awarded, or recover any excess by distress (*y*).

Parties who have taken bonds from the company before they were permitted to enter upon lands (*z*), are also possessed of a speedy and effectual mode of recovering the compensation awarded to them.

On the payment or investment of the compensation or purchase-money.

VI. Although, as it has been shewn (*a*), the 8 Vict. c. 18, enables tenants for life, and other persons under various disabilities, to sell and convey lands to a railway company, such parties are not entitled to take the purchase-money or compensation awarded or paid for the purchase of such lands, or for permanent damage thereto, for their own use, but it must be re-invested for the benefit of the parties interested in the lands. The following are the provisions of the statute on this subject:—

If the purchase-money or compensation which shall be

(*t*) *Corrigal* v. *The London and Blackwall Railway Company*, 5 Man. & G. 219; and see *R.* v. *The Hull and Selby Railway Company*, 6 Q. B. 70; *Williams* v. *Jones*, 13 M. & W. 628.

(*u*) When it is necessary first to ascertain the amount of the costs, see *R.* v. *The London and Blackwall Railway Company*, 3 Dowl. & L. 399.

(*x*) 8 Vict. c. 18, s. 53, post, App., 128.

(*y*) Ibid.

(*z*) See ante, 164, 172.

(*a*) Ante, 147.

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payable in respect of any lands, or any interest therein purchased or taken by the company, from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same, except under the provision of the Railway Act, or the compensation to be paid for any permanent damage to any such lands amounts to or exceeds 200*l.*, then such purchase-money or compensation must be paid into the Bank of England or Ireland, as the case may be, in the manner particularly prescribed, and the monies remain so deposited, until they can be applied to one or more of the following purposes: that is to say,—

1. In the purchase or redemption of the land-tax, or the discharge of any debt or incumbrance affecting the land in respect of which the money was paid, or affecting other lands settled therewith, to the same or the like uses, trusts, or purposes (*b*).

2. In the purchase of other lands, to be conveyed upon the like uses, trusts, and purposes, and in the same manner as the land stood settled, in respect of which such money shall have been paid (*c*).

3. If the money be paid in respect of buildings taken or injured by the railway works—in removing or replacing such buildings, or substituting others in their stead.

(*b*) When an act of Parliament, establishing a railway company, authorized the company to purchase lands of corporations, tenants for life, &c., and directed that the purchase-money should be applied in the redemption of the land-tax upon other parts of the property unsold, it was decided that a tenant for life, who had redeemed the land-tax before the passing of the act, might reimburse himself, out of the proceeds of the lands purchased of him by the company. *Ex parte Northwick*, 1 Y. & Coll. 166.

(*c*) It has been decided under a special railway act, that, where money is in court previous to being laid out

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4. In payment to any party becoming absolutely entitled to such money. (8 Vict. c. 18, s. 69, post, App., 131).

The act points out the mode of proceeding, by petition to the Court of Chancery, whereby the party who would have been entitled to the rents and profits of the lands may have the money applied to the above-mentioned purposes; and, until the money can be so applied, it may, upon the order of the Court, be invested in the funds in real securities, and the annual proceeds thereof be paid to the party who would for the time being have been entitled to the rents and profits of the lands. (*Id.*, s. 70, post, App., 132).

If such purchase-money or compensation exceed 20*l.*, and is less than 200*l.*, it may be either paid into the Bank, and applied for the above-mentioned purposes, or, with the approbation of the company, may be paid to two trustees nominated in the manner prescribed, to be by them applied to the same purposes. (*Id.*, s. 71, post, App., 132). Any sum payable as compensation, and not exceeding 20*l.*, is payable to the parties who were entitled to the rents and profits of the land; or, in case of coverture, infancy, lunacy, or other incapacity of the parties, then to their respective husbands, guardians, committees, or trustees. (*Id.*, s. 72, post, App., 132).

And all sums of money exceeding 20*l.*, payable under *contracts or agreements* made by the company with persons who are not absolutely entitled to the lands, must, in like manner, be paid into the Bank. The statute directs, upon

in lands to be settled "to the like uses," the Court will lend its aid to an advantageous purchase beyond the amount of the money in Court, and will direct the extra costs to be paid out of the money in Court. *Ex parte Newton*, 4 Y. & Coll. 518. But see *Ex parte Tetley*, 4 Railway Cases, 55; *Ex parte Madon*, Id. 49. In another case, a small sum of money directed to be laid out in lands, to be settled "to the like uses," was ordered to be applied in new buildings. *Ex parte Shaw*, 4 Y. & Coll. 506.

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this subject, "that all sums of money payable in respect of the taking, using, or interfering with any lands, under a contract or agreement with any person not entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely, for his own benefit, shall be paid into the Bank, or to trustees in manner aforesaid; and it shall not be lawful for any contracting party, not entitled as aforesaid, to retain to his own use any portion of the sums so agreed or contracted to be paid, for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorising the taking of such lands; but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession, as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery in England, or the Court of Exchequer in Ireland, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the Bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works." (*Id.*, s. 73, post, App., 132).

And it is further enacted, that, "where any purchase-money or compensation so paid into the Bank under the provisions of the act, shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee-simple thereof, or of any reversion dependent on any such lease or

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estate, it shall be lawful for the said Courts respectively, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid, in such manner as the Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which the money shall have been paid, or as near thereto as may be." (*Id.*, s. 74, post, App., 133).

The purchase-money or compensation, payable to the owners of lands who neglect to convey them, &c., may also, in certain cases, be paid into the Bank, as will be shewn in another place (*d*).

The statute also contains an important provision, which requires the company to pay all the costs relating to the investment of monies paid into the Bank.

It enacts, that, in all cases of monies deposited in the Bank, under the provisions of that or the special act, or any act incorporated therewith, (except where monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required) (*d*), it shall be lawful for the Court of Chancery in England, or the Court of Exchequer in Ireland, to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the company, (that is to say), the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof (*e*), other than such costs as are herein otherwise provided for, and the

(*d*) See post, 334.

(*e*) An act, which enabled a company to purchase and take lands for making a railway, provided that the costs of the "contracts, sales, and conveyances" should be borne by

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costs of the investment of such monies in government or real securities (*g*), and of the re-investment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends (*h*) and interest of the securities upon which such monies shall be invested, and for the payment out of court of the principal of such monies, or of the securities whereon the same shall be invested,

the purchasers; and it was held that the vendors were, under these words, entitled to be reimbursed the costs of making out their title to the land purchased by the company. *Ex parte Feoffees of Addie's Charity*, 3 Hare, 22; 3 Railway Cases, 119.

(*g*) The brokers' commission on the purchase of stock is a part of the costs of the investment, which must be borne by the company. *Ex parte the Corporation of Trinity House*, 3 Hare, 95. In some of the earlier special acts, the costs of the *interim* investment were not provided for. *Ex parte Hirst*, 4 Y. & Coll. 468; *Ex parte Taylor*, 1 Y. & Coll. 229; *Ex parte Cooke*, 3 Railway Cases, 137. But where the Court had power to order the expenses "of all purchases" made in pursuance of the act, it was decided that the costs of the investment were included. *Ex parte the Bishop of Durham*, 3 Y. & Col. 690. See also *Ex parte Onslow*, 1 Y. & Coll. 553; *Ex parte Northwick*, 1 Y. & Coll. 166; *Ex parte Trafford*, 2 Y. & Coll. 522; *Ex parte Gardiner*, 3 Railway Cases, 117; *In re Great Western Railway Company*, 1 Phillips, 560; *Ex parte Cresswell*, 10 Jur. 86. A statute contained a provision that the expenses of re-investment, &c. should be paid by the company; and, in a subsequent part of the statute, the Lords of the Treasury were empowered to purchase certain quays within a limited time; but no express directions were given as to the reinvestment of the purchase-monies, or as to the payment of the expenses. By a subsequent act, the time given to the Lords of the Treasury for purchasing the quays was extended, and it was enacted, that all the powers, provisions, regulations, directions, clauses, matters, and things in the former act, should extend to the subsequent act. It was held on appeal, (affirming the decision of the Vice-Chancellor), that the clauses in the former act, as to the reinvesting of purchase-monies and the payment of the expenses of such reinvestment, were applicable, mutatis mutandis, to the subsequent act. *In re the Lords of the Treasury*, 1 My. & C. 676; *Ex parte Marshall*, 4 Railway Cases, 58.

(*h*) Semble, that these words do not extend to make the company liable to the costs of the *payment* of the dividends. *Ex parte Athorpe*, 3 Y. & Coll. 396; *Mitchell* v. *Newell*, 3 Railway Cases, 515.

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and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: Provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court that it is for the benefit of the parties interested in the monies, that the same should be invested in the purchase of lands, in different sums, and at different times, in which case the Court may order the costs of any such investments to be paid by the company (*i*). (8 Vict. c. 18, s. 80, post, App., 135).

And, if any question arises respecting the title to the land, in respect whereof any monies shall have been paid or deposited, the parties respectively in possession of the lands as owners, or in receipt of the rents, or being entitled thereto, at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to the lands, until the contrary be shewn to the satisfaction of the Court; and, unless the contrary be so shewn, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the securities purchased therewith. (*Id.*, s. 79, post, App., 135).

When money has been deposited, the statute proceeds to provide, that, upon application of parties making claim to it, or to the lands in respect whereof the deposit was made, or any interest in the same, the Courts above mentioned may, in a summary way, as to them shall seem fit, order the money to be laid out and invested in the public funds, or

(*i*) In two cases where the Court had a discretion as to the allowance of the costs of investment, the costs of two applications were given. *Ex parte Eton College*, 3 Railway Cases, 271; *Ex parte Trustees of Waste Lands of Boxmoor*, Id. 513. In another case, where the costs of a third investment out of a sum of £125,000 were asked for, the Vice-Chancellor granted the application. *In the matter of St. Katherine's Dock Company*, 3 Railway Cases, 514.

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may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, and may make such other order in the premises, as to the said Court shall seem fit. (8 Vict. c. 18, s. 78; and see *Id.*, s. 79, post, App., 134).

The following important cases have been decided on Railway Acts, which contained similar provisions to the above: In *Ex parte Grainge* (*k*), a petition was presented, which stated the following facts:—That certain commissioners, under an act for inclosing lands in the parish of Harlington, had, by their award, made in 1821, allotted and awarded to the petitioner a piece of freehold land, situate in that parish; the petitioner had, ever since the making of the award, until the time thereafter mentioned, been in possession of the land, and in the receipt of the rents and profits; that the petitioner having received notice from the Great Western Railway Company that they would require the allotment for the purposes of the railway, it was agreed between the parties that the value of the allotment should be determined by a surveyor, and that the amount of the valuation, and of the petitioner's costs, should be paid by the company to the petitioner; that the surveyor, in 1837, certified the value, and an abstract of the petitioner's title was, thereupon, delivered to the company; but that the company, without the petitioner's consent, took possession of the land, and, having some objections to the title, they paid the amount of the purchase-money, &c. into the Bank, in the name of the accountant-general; and that such sum was, at the time of presenting this petition, remaining uninvested. The petition then prayed, that the money might be ordered to be paid to the petitioner, and that the company might pay the

(*k*) 3 Y. & Coll. 62.

costs of the petition; the petitioner, by his affidavit, stating, in addition to the foregoing facts, that he was not aware of any right in any other person, or of any claim made by any other person, to the said money so paid into the Bank, or to the said allotment of land. *Alderson*, B., observed, that there were great objections to such an application as the present, as it was obvious that the party applying for the money might have a very limited interest in the lands. He, however, would consider himself bound by the decisions of other judges, and would therefore examine the orders which had been made in the cases cited, and deliver his opinion on a future day. And, on a subsequent day, his lordship said, that he had examined the orders made by former judges, and that, upon the authority of those orders, he felt himself bound to accede to the application.

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A similar application was afterwards made (*l*), in the matter of the Birmingham and Gloucester Railway Act, there being no other evidence of the title of the lands than the applicant's affidavit. Upon that occasion, the same learned Judge said, "I am bound by the authorities, though I do not comprehend them. The party may sell to the company lands in strict settlement, and then apply for the money out of court. However, the order must be made" (*m*).

(*l*) *Ex parte Grainge*, 3 Y. & Coll. 66, n. (*b*).

(*m*) The party who applies under these sections must strictly verify his title, and state, that, to his knowledge and belief, no other person has any title to, or claims any interest to the estate. *Ex parte Shears*, 2 Y. & Jer. 493. And if it appears to the court of equity, when a petition is presented, that there is a dispute respecting the title of the petitioner, it seems to be the practice to direct an issue to determine the question. *Ex parte Issauchaud*, 3 Y. & Coll. 721. As to whether an incumbrancer may apply by petition under the above statute, see *Ex parte Back*, 2 Y. & Jer. 386.

On the title to and conveyance of the lands.

VII. When lands are purchased of the company by agreement, or are taken under the compulsory powers contained in the special act, the owner or other party entitled to sell or convey the lands is bound to make out a good title; and it is usual to deliver an abstract of the title to the company (*n*), as in the case of an ordinary sale of lands (*o*). The owner is also required to execute a conveyance to the company. But, to prevent the inconvenience which would result by the neglect or inability of the party to perfect the title, and make the conveyance, the statute contains the following wholesome provision:—

If the owner of any lands purchased or taken by the company, or of any interest therein, on tender of the purchase-money or compensation, either agreed or awarded to be paid in respect thereof, refuses to accept the same, or neglects or fails to make out a title to the lands, or to the interest therein claimed by him, to the satisfaction of the company; or if he refuses to convey or release the lands as directed by the company; or if any such owner be absent from the kingdom, or cannot, after diligent inquiry, be found; or if he fails to appear on the inquiry before a jury; then, in either of the above-mentioned cases (*p*), the com-

(*n*) In the absence of an agreement to the contrary, the costs of making out the title are paid by the company. See post, 338; and see the evidence given before the Lords' Committee, ante, 273.

(*o*) It seems to be the practice of railway companies to be satisfied with a good holding title. See the evidence given before the Lords' Committee, ante, 273.

(*p*) These words are prospective in their operation. Thus, where a railway act empowered a railway company to summon a jury in cases where the owner of lands failed to disclose or prove his title, and, an owner having failed to comply with the act in this particular, a jury was summoned, and the amount of compensation assessed; whereupon the company, without calling upon the owner to produce his title, paid the amount of the compensation into the Bank, in pursuance of a clause in the railway act, similar in its terms to

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pany may deposit the purchase-money or compensation payable in respect of the lands or any interest therein, in the Bank of England, to the credit of the parties interested in such lands, subject to the control and disposition of the Court of Chancery in England, or the Court of Exchequer in Ireland. (*Id.*, s. 76, post, App., 134). When the money has been thus deposited, the cashier of the Bank is required to give the company a receipt for the same; and the company may then, if they think fit, execute a deed-poll (*q*), containing a description of the lands, and declaring the circumstances under which the deposit has been made; "and thereupon all the estate and interest in such lands of the

the above, and took possession of the lands; it was held by the Court of Exchequer, that the company were not authorized to take this step. *Rolfe*, B., observed,—"It is clear that the object of this act was to enable the parties claiming compensation for their lands to make out their title after the jury had assessed the amount of that compensation. Here an offer was made by the company, which the plaintiff treats as a nullity; on which the company, who want the land for their works, apply to a jury to assess the compensation, and it is assessed accordingly. Now, after that was done, they were bound to call on him to shew his title; and until they do so, they have no right to take possession of his land by paying the amount of the compensation-money into Chancery. Neither the letter nor the spirit of the act bears out such a construction, and it would be most unjust, if it did." *Doe* d. *Hutchinson* v. *The Manchester, Bury, and Rossendale Railway Company*, 14 M. & W. 687; 9 Jur. 949.

(*q*) This deed must be stamped with the stamp-duty which would have been payable upon a conveyance of the land. 8 Vict. c. 18, s. 77, post, App., 134. Railway companies will probably be advised, in all cases which fall under the purview of the 77th section, to perfect their title by executing a deed-poll in pursuance of the statute. It seems to have been the intention of the Legislature (probably with a view to the Stamp Acts) to require a conveyance in all cases. It should here be mentioned, that, in the following cases, it was decided that lands may be vested otherwise than by an actual conveyance. *Bruce* v. *Willis*, 11 A. & E. 463; 2 Railway Cases, 7; 3 P. & Dav. 220; *Doe* d. *Robins* v. *Warwick Canal Company*, 2 Bing. N. C. 483; 2 Scott, 7; *Earl of Harborough* v. *Shardlow*, 7 M. & W. 87; 2 Railway Cases, 253. But it will be found that the provisions inserted in the 8 Vict. c. 18, differ materially from those which are inserted in the Canal Acts above referred to.

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parties, for whose use and in respect whereof such purchase-money or compensation shall have been deposited, shall vest absolutely in the company, and as against such parties they shall be entitled to immediate possession of such lands." (*Id.*, s. 77, post, App., 134).

And when monies have been deposited in the Bank by the company in respect of the purchase-money or compensation for lands which belong to parties who have limited interests only in such lands, the statute points out the mode in which the title of the company to such lands is to be perfected (*r*).

It is provided, that, upon deposit in the Bank in manner thereinbefore provided (*s*) of the purchase-money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the company, the owner of such lands, including in such term all parties by that act enabled to sell or convey lands, shall, when required so to do by the company, duly convey such lands to the company, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the company, if they think fit (*t*), to execute a deed-poll in the manner prescribed, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the company, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made; and such deed-poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the company of the lands described therein; and thereupon all the estate and interest in such lands of, or

(*r*) 8 Vict. c. 75, post, App., 133.

(*s*) Vide ante, 328.

(*t*) The observation contained in note (*q*), ante, 335, is applicable here.

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capable of being sold and conveyed by, the party between whom and the company such agreement shall have been come to, or as between whom and the company such purchase-money or compensation shall have been determined by a jury or by arbitrators or by a surveyor, and shall have been deposited as aforesaid, shall vest absolutely in the company; and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the company shall be entitled to immediate possession of such lands. (*Id.*, s. 75, post, App., 133).

With respect to the form of the conveyance, the statute provides that conveyances of lands to be purchased may be according to the forms in the schedules (A. and B.) (*x*) to the act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the company may think fit; and all conveyances so made are effectual to vest the lands thereby conveyed in the company, and operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but, although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot and assigned to a trustee for the company to attend the reversion and inheritance (*y*). (8 Vict. c. 18, s. 81, post, App., 135).

(*x*) See these forms, post, App., 155 and 156. Some useful observations on the use of these statutory forms may be seen in Messrs. Frend & Ware's Collection of Precedents of Conveyances relating to Transfers of lands to Railway Companies, 133.

(*y*) And see 8 & 9 Vict. c. 112.

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The costs of all such conveyances are to be borne by the company, and such costs include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the company may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title. (*Id.*, s. 82, post, App., 136).

If the company and the party entitled to any of the above costs do not agree as to the amount, the costs may be taxed (*x*) by one of the taxing Masters of the Court of Chancery, or by a Master in Chancery in Ireland, upon an order of the same Court; and the company are required to pay what the Master shall certify to be due, or, in default, the same may be recovered in the same way as any other costs payable under an order of the Court, or the same may be recovered by distress in the manner provided in the act; and the expense of taxing such costs are to be borne by the company, unless, upon the taxation, one-sixth part of the amount be disallowed, in which case the costs of taxation are to be borne by the party whose costs are taxed. (*Id.*, s. 83, post, App., 136).

In a case decided before the passing of the Consolidation Act, where a landowner contracted with a railway company to sell them a certain portion of his land, and the landowner died, and the legal estate in the lands descended to infants, it was ruled, that, as the vendor had suffered the legal estate

(*x*) If the lands are purchased under a special agreement made between the parties, quære whether the costs may be taxed. ***Ex parte The Great Western Railway Co.***, 3 Railway Cases, 516.

in the lands to descend to infants, and had thereby occasioned the necessity of a suit in order to procure a conveyance of the legal estate, the costs of the suit ought to be defrayed out of the purchase-money (*y*).

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§ 6.—On the Powers and Obligations of Railway Companies to construct and repair the Works connected with a Railway.

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I. We have seen that the parliamentary plans and books of reference, which are referred to in every special act, point out the course of the railway (*a*), and, with the exceptions presently to be noticed, no deviations from the line thus laid

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(*y*) *The Midland Counties Railway Co.* v. *Wescomb*, 2 Railway Cases, 211; *The Midland Counties Railway Co.* v. *Caldecott*, Id. 394; see also *Ex parte Ommaney*, 10 Sim. 298; *Farrar* v. *Lord Winterton*, 4 Y. & Coll. 472; *The Eastern Counties Railway Company* v. *Tufnell*, 3 Railway Cases, 133.

(*a*) Ante, 104, 145. If any person wilfully obstruct any person setting out the line of the railway, or pull up stakes or marks shewing the line, he is liable to a penalty of £5. (8 Vict. c. 20, s. 24, post, App., 164).

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... a power to rectify mistakes ... company by the Railways Clauses ... us, if any omission, mis-statement. ... has been given of lands or owners, ... tary plans, schedules, or books of re- ... may, after giving notice, may apply to ... have power to certify that the omission ..., and thereupon to correct the same (*c*). ... must be deposited with the clerks of the ... clerks, and postmasters, with whom the plans ... and after such certificate has been given, the ... may make the works in accordance with such cer- ... 8 Vict. c. 20, s. 7, post, App., 159). And the ... are required to deposit with the clerks of the ... parish clerks, and postmasters, a plan and section of ... deviations from the original plans and sections which have ... been approved by Parliament. (*Id.*, s. 8, post, App., 160).

For this reason, it frequently ... becomes necessary to obtain a sup- ... plementary act of Parliament to autho- ... rize deviations in the line of the railway. ... In a case where a company were ... empowered to take lands for the for- ... mation of a railway, and to deviate ... to the extent of one hundred yards ... from the line laid down in their map, ... provided such deviation was made ... within two years from the passing of ... their act, and which two years would ... expire on the 4th of July, 1838, it ap- ... peared that in January, 1837, a devia- ... tion in the line, within the prescribed ... limit, was made. A subsequent act, ... passed in May, 1837, enacted, that the ... time by the first act limited for the com- ... pulsory purchase of lands should be ... enlarged for the term of one year, but ... provided that no deviation from the ... line laid down should be made after ... the expiration of the period by the ... first act limited. The railway com- ... pany having, subsequently to the 4th ... of July, 1838, given notice to certain ... owners of lands on the line to which ... they had deviated in January 1837, ... of their intention to take the lands ... under the powers given by the acts— ... on a motion for an injunction to re- ... strain the railway company from so ... proceeding to obtain possession, it ... was decided by Lord Cottenham, C., ... that the second act must be construed ... to give the company an enlarged period ... of one year, in which to exercise the ... power of taking the land in the line ... to which they had so deviated. *The Dun Navigation Co.* v. *The North Midland Railway Co.*, 1 Railway Cases, 135.

(*c*) *Taylor* v. *Clemson*, 2 Q. B. 978; 3 Railway Cases, 65.

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These plans may be inspected and copied by all persons interested, in the same manner as the original plans and sections, under the powers of 1 Vict. c. 83 (*d*). (*Id.*, s. 9, post, App., 160). Copies of any of these plans and books of reference, certified by the clerk of the peace, are receivable in evidence. (*Id.*, s. 10, post, App., 160).

With respect to lateral deviations, it is enacted, that it shall be lawful for the company to deviate from the line delineated on the plans deposited, provided that no such deviation shall extend to a greater distance than the limits of deviation delineated upon the said plans, nor to a greater extent, in passing through a town, village, or lands continuously built upon, than ten yards, or elsewhere to a greater extent than one hundred yards from the said line; and that the railway, by means of such deviations, be not made to extend into the lands of any person, whether owner, lessee, or occupier, whose name is not mentioned in the books of reference, without the previous consent in writing of such person, unless the name of such person shall have been omitted by mistake, and the fact that such omission proceeded from mistake shall have been certified in manner therein or in the special act provided for in cases of unintentional errors in the said books of reference. (*Id.*, s. 15, post, App., 162).

But it seems that a railway company may make a deviation, and, by consent of the owners, take lands which are not included within the parliamentary plans, provided that no injury is thereby sustained by any other landowner through whose lands the railway is to pass. The rule is, that each landowner has a right to have the powers of the act strictly and literally carried into effect as regards his own land, and has a right also to require that no variation

(*d*) See Appendix, 3.

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shall be made to his prejudice in the carrying into effect the bargain between the undertakers and any one else (*e*).

In a case (*f*) where a railway act enacted, that the lands to be taken for the line of the railway should not exceed twenty-two yards in breadth, except where a greater breadth should be necessary for waiting-places, embankments, cuttings, &c., and a subsequent section provided that the company, in making the railway and other works, should not deviate from the line delineated on the plan deposited with the clerk of the peace, with or without consent of the owners or occupiers of the lands, more than 100 yards, and that no deviation should extend into the lands or property of any person not mentioned in the book of reference to the plan, unless omitted by mistake; and the company were empowered to make such deviations in the section as might be necessary in consequence thereof:—it was held, that the statute only prohibited the company from making the substituted line of the railway itself at a greater distance than 100 yards from the line delineated in the plan; but that it did not prevent them from taking lands at a greater distance from it than the 100 yards for the purpose of embankments, cuttings, &c., the intention of the act being to give the company the same incidental powers with respect to the deviated line as they had with respect to the original line.

Alderson, B., in giving judgment in this case, said, "With respect to the deviation, it appears to me to be a very simple question. In the parliamentary plan a line is laid down, and a certain deviation from that line is permitted to take place. The parliamentary plan is to be the guide for persons taking it in their hands to know in what

(*e*) *Lee* v. *Milner*, 2 Y. & Col. 618; see also *Doe* d. *Payne* v. *The Bristol and Exeter Railway Co.*, 6 M. & W. 320.

(*f*) *Doe* d. *Payne* v. *The Bristol and Exeter Railway Co.*, 6 M. & W. 320; 2 Railway Cases, 75.

direction the railroad is to go across the face of the country. What is 'the line' laid down in the parliamentary plan? What line across the country does it represent? It appears to me that it represents the *medium filum viæ* of the railway which is to be thereafter made; and the deviation which is to be allowed is to be a deviation between the *medium filum viæ* of the railway, as described by the parliamentary plan, and the *medium filum viæ* of the railway which is ultimately to be laid down; and if between these two corresponding points an interval of not more than 100 yards exists, measured in a horizontal level, the deviation does not exceed that which is allowed by the act of Parliament to be made. That appears to me to be a correct definition of the deviation allowed by the act; and if that be so, according to the evidence in this case, the distance between the two lines does not exceed the limit which the act of Parliament has provided. But it is suggested to us that the word 'deviation' cannot have this sense, and cannot mean the interval between the two *media fila viæ*, by reason of the words in the same clause, which provide that 'the deviation shall not extend into' lands not mentioned in the books of reference. I perfectly agree that the deviation cannot extend into lands not mentioned in the books of reference; and inasmuch as this is a parliamentary bargain between the public (including the railway proprietors) on the one side, and individuals on the other, I agree that it must be faithfully and correctly performed, and there can be no deviation at all into lands not mentioned or defined by the act of Parliament; for, although the parties themselves might permit the company to go over some of their lands, yet other people have an interest not to allow it. But this provision, as it appears to me, does not extend to more than the line of railway—it does not extend to slopes and embankments. The railway itself can go only to a certain

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distance from the original line; and when it does not exceed that distance, it can be of no importance to the parties through whose lands it passes, whether the lands of other people be taken for slopes or embankments, provided they be taken with their consent: they cannot be taken without. It therefore appears to me, if the deviation does not go into lands not contained in the books of reference, it is competent for the company to proceed with their slopes and embankments in other lands, provided they have the consent of the parties to whom those lands belong, and not without" (*g*).

It sometimes happens that the special act prohibits the company from entering upon or taking lands without the consent of the owner; and if so improvident a provision is inserted, it is then in the power of one individual to stop the progress of the undertaking, although the special act may specifically point out the intended course of the railway. Thus, where a statute authorised a company to form their railway by a certain line over lands described, and a subsequent section provided that nothing in the act should authorise the company to enter into or upon, or to take, use, damage, or prejudice the lands, estate, property, or effects of any corporation or person whomsoever, without the consent in writing of the owner and occupier, it was decided, that it was competent for a rival company to refuse to allow their railway to be crossed, although the effect of such a construction of the statute was to prevent the under-

(*g*) A railway act prescribed the general line of the railway, and afterwards (sect. 59) directed that it should pass between streets A. and C., and so as to leave twenty-four yards between the railway and either A. or C., or otherwise, if there were not twenty-four yards between, the company should, if required, purchase such space as was less than twenty-four yards, and also half of A. or C., as the case might be. The railway, without deviating from the line first prescribed, passed over street A.; but the company had previously purchased the whole of street A. It was decided that this was a compliance with sect. 59. *Taylor* v. *Clemson*, 2 Q. B. 978; 3 Railway Cases, 65.

The Line of the Railway, and herein of Deviations.

taking from being carried into execution (*h*). Where a special act provided that nothing therein contained should be construed to prevent any owner or occupier of any land through which the railway might pass, from carrying any railway or other road, which such owner or occupier was authorised to make in his lands, across the main railway, within the respective lands or grounds of such owner or occupier, it was decided, in the House of Lords on appeal, that this provision enabled the owner of land on one side of the railway, to make a railway across the main railway and over lands on the other side, of which he had become lessee since the passing of the act, because the clause was obviously intended for the convenience of those who might be occupiers, or from time to time become occupiers, of the land partly on one side and partly on the other side of the principal railway, and that without reference to the title under which the lands might be held (*i*).

So, where a canal act authorised the proprietors of any mines of coal, within certain parishes, to make any railway or roads to convey their coals to the intended canal, over the lands of any person, first paying satisfaction for damage, &c., it was held, that this power to make railways extended to persons who became proprietors of coal-mines subsequently to the passing of the act; and that such proprietors were empowered to make railways to be traversed by locomotive engines, though such engines were not in use when the act passed (*k*).

(*h*) *The Clarence Railway Co.* v. *The Great North of England, Clarence, and Hartlepool Junction Railway Co.*, 4 Q. B. 46; S. C., in equity, 2 Railway Cases, 763. See also *Gray* v. *The Liverpool and Bury Railway Company*, 10 Jurist, 364.

(*i*) *Monkland and Kirkintilloch Railway Co.* v. *Dixon*, 3 Railway Cases, 273.

(*k*) *Bishop* v. *North*, 11 M. & W. 418; 3 Railway Cases, 459; and see *Farrow* v. *Vansittart*, 1 Railway Cases, 602; and *Dand* v. *Kingscote*, 2 Railway Cases, 27.

General powers to construct the railway and works.

II. It is now proposed to consider the general powers contained in the Consolidation Act, to enable the company to construct the railway and other necessary works.

These powers are of a very extensive nature. The Railway Clauses Consolidation Act enacts, "That, subject to the provisions and restrictions in that act and the special act contained, or in any act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith thereinafter mentioned, to execute any of the following works (that is to say):

They may make or construct, in, upon, across, under, or over any lands (*l*), or any streets, hills, valleys, roads, railroads, or tram-roads, rivers, canals, brooks, streams, or other waters, within the lands described in the said plans, or mentioned in the said books of reference, or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, and fences, as they think proper (*m*):

They may alter the course of any rivers not navigable, brooks, streams, or watercourses, and of any branches of navigable rivers, such branches not being themselves navigable, within such lands, for the purpose

(*l*) As to the powers enabling the company to take temporary possession of lands and roads, see ante, 165, 176; as to the obligation to take the whole of a house or small parcels of land, ante, 165; as to taking lands lying on the sea shore, ante, 151; as to lands lying over minerals, ante, 152, 188. The company may also, in addition to the lands which they are authorised to take compulsorily, contract for the purchase of any land near the railway, not exceeding in the whole the prescribed number of acres, for extraordinary purposes, that is to say, for providing stations, yards, warehouses, roads, &c. 8 Vict. c. 20, s. 45, post, App., 171.

(*m*) See the cases as to temporary and other bridges, collected, post, 363, 369; as to roads, 381.

General Powers to construct the Railway and Works.

of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, roads, streets, or ways, or raise or sink the level of any such rivers or streams, roads, streets, or ways, in order the more conveniently to carry the same over or under, or by the side of the railway, as they may think proper:

They may make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway (*n*):

They may erect and construct such houses, warehouses, offices, and other buildings, yards, stations (*o*), wharfs, engines, machinery, apparatus, and other works and conveniences, as they think proper:

They may from time to time alter, repair, or discontinue the before-mentioned works, or any of them, and substitute others in their stead; and

They may do all other acts necessary for making, maintaining, altering, or repairing, and using the railway.

Provided always, that, in the exercise of the powers by this or the special act granted, the company shall do as little damage as can be, and shall make full satisfaction, &c. to all parties interested for all damage by them sustained by reason of the exercise of such powers." (8 Vict. c. 20, s. 16, post, App., 162).

(*n*) The Drainage Commissioners in Ireland are empowered to protect lands in Ireland, subject to floods, &c., from sustaining any injury by the formation of railway works. 8 Vict. c. 20, ss. 25 to 29, post, App., 165, 166.

(*o*) See the cases as to the construction of stations, post, 360.

General powers to construct the railway and works.

carry on their works in damage than the necessity of equity will restrain them; for, to be prevented from doing to the due prosecution of their on the other hand, prosecute it to unnecessary damage to others. company were proceeding to erect for the purpose of sustaining an the railway was to be constructed, injury would be done to the mill if proposed dimensions, but that the in- if the arch were of certain larger action was granted to restrain the com- over the mill-race an arch of less than dimensions (*p*).

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the general powers thus conferred are restrained inserted in the act, for the purpose of requiring certain engineering works connected with the railway executed in a specified manner.

In making the railway, it is not lawful for the to deviate from the levels of the railway as re- to the common datum line described in the section of by Parliament, and as marked on the same, to exceeding in any place five feet, or, in passing a town, village, street, or land continuously built two feet, without the previous consent in writing of

(*p*) Coats v. *The Clarence Railway Co.*, 1 Russ. & M. 181; see also Mayor v. *The Northern and Eastern Railway Co.*, 2 Railway Cases, 380, post, 369.

Limitations of General Powers.

the owners and occupiers of the land in which such deviation is intended to be made; or, in case any street or public highway shall be affected by such deviation, then the same shall not be made without the like consent of the trustees or commissioners having the control of such street or public highway, or, if there be no such trustees or commissioners, without the like consent of two or more justices of the peace in petty sessions assembled for that purpose, and acting for the district in which such street or public highway may be situated, or without the like consent of the commissioners for any public sewers, or the proprietors of any canal, navigation, gas-works, or water-works affected by such deviation: Provided always, that it shall be lawful for the company to deviate from the said levels to a further extent without such consent as aforesaid, by lowering solid embankments or viaducts, provided that the requisite height of headway, as prescribed by act of Parliament, be left for roads, streets, or canals passing under the same; Provided also, that notice of every petty sessions to be holden for the purpose of obtaining such consent of two justices as is hereinbefore required, shall, fourteen days previous to the holding of such petty sessions, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made, or, if there be no church, some other place to which notices are usually affixed. (*Id.*, s. 11, post, App., 160).

Public notice to be given previous to making greater deviations.

Before it shall be lawful for the company to make any greater deviation from the level than five feet, or, in any town, village, street, or land continuously built upon, two feet, after having obtained such consent as aforesaid, it shall be incumbent on the company to give notice of such intended deviation by public advertisement, inserted once at

Limitations of General Powers

least in two newspapers, or twice at least in one newspaper, circulating in the district or neighbourhood where such deviation is intended to be made, three weeks at least before commencing to make such deviation; and it shall be lawful for the owner of any lands prejudicially affected thereby, at any time before the commencement of the making of such deviation, to apply to the Board of Trade, after giving ten days' notice to the company, to decide whether, having regard to the interests of such applicants, such proposed deviation is proper to be made; and it shall be lawful for the Board of Trade, if they think fit, to decide such question accordingly, and, by their certificate in writing, either to disallow the making of such deviation or to authorise the making thereof, either simply or with any such modification as shall seem proper to the Board of Trade; and, after any such certificate shall have been given by the Board of Trade, it shall not be lawful for the company to make such deviations, except in conformity with such certificate. (*Id.*, s. 12, post, App., 161).

Arches, viaducts, and tunnels.

So, with respect to arches, viaducts, and tunnels, it is provided, that, where in any place it is intended to carry the railway on an arch or arches or other viaduct, as marked on the said plan or section, the same shall be made accordingly; and where a tunnel is marked on the said plan or section, as intended to be made at any place, the same shall be made accordingly, unless the owners, lessees, and occupiers of the land in which such tunnel is intended to be made shall consent that the same shall not be so made. (*Id.*, s. 13, post, App., 161).

Gradients and curves.

And, as to gradients and curves, tunnels, or other engineering works, it is enacted, that it shall not be lawful for the company to deviate from or alter the gradients, curves, tunnels, or other engineering works described in

the said plan or section, except within the following limits and under the following conditions; (that is to say),

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Subject to the above provisions in regard to altering levels, it shall be lawful for the company to diminish the inclination or gradients of the railway to any extent, and to increase the said inclination or gradients as follows; (that is to say), in gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet per mile, or to any further extent which shall be certified by the Board of Trade to be consistent with the public safety, and not prejudicial to the public interest; and in gradients of or exceeding the inclination of one in a hundred, to any extent not exceeding three feet per mile, or to any further extent which shall be so certified by the Board of Trade as aforesaid.

It shall be lawful for the company to diminish the radius of any curve described in the said plans to any extent which shall leave a radius of not less than half a mile, or to any further extent authorised by such certificate as aforesaid from the Board of Trade.

It shall be lawful for the company to make a tunnel, not marked on the said plan or section, instead of a cutting, or a viaduct instead of a solid embankment, if authorised by such certificate as aforesaid from the Board of Trade. (*Id.*, s. 14, post, App., 161).

Crossing of roads.

And with respect to the crossing of roads, or other interferences therewith, it is enacted, "that if the line of the railway cross any turnpike-road or public highway, then (except where otherwise provided by the special act) either such road shall be carried over the railway or the rail-

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way shall be carried over such road, by means of a bridge (*q*), of the height and width, and with the ascent or descent, by this or the special act in that behalf provided; and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed and at all times thereafter maintained at the expense of the company" (*r*). (*Id.*, s. 46, post, App., 171).

Construction of bridges over roads.

"And every bridge to be erected for the purpose of carrying *the railway over any road* shall (except where otherwise provided by the special act) be built in conformity with the following regulations; (that is to say),

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty-five feet if the arch be over a turnpike-road (*s*), and of twenty-five feet if over a public carriage-road, and of twelve feet if over a private road.

The clear height of the arch from the surface of the

(*q*) This section also contains a proviso, that, with the consent of two or more justices in petty sessions, it shall be lawful for the company to carry the railway across any highway, other than a public carriage-road, on the level. When the company intend to apply to the justices for permission so to cross, public notice of the application must be given, (8 Vict. c. 20, s. 59, post, App., 175); if any party is aggrieved by the determination of the justices, there may be an appeal to the sessions, and the sessions may finally determine the question, and award costs. (*Id.*, s. 60, post, App., 175). Handrails, fences, gates, or stiles, and convenient approaches, must be made by the company, when the railway crosses any highway, other than a public carriage-way, on the level, (*Id.*, s. 61, post, App., 175); and if they neglect to do so, two justices may inflict a penalty, and order it to be applied in executing the work in respect whereof the penalty was incurred. (*Id.*, s. 62, post, App., 175). As to the powers given to the Board of Trade in all cases where the railway crosses roads on a level, see ante, 91.

(*r*) See the cases as to the construction of bridges, collected post, 363, 369.

(*s*) A road on which toll gates are by law erected, and tolls taken thereat, is a turnpike road within the meaning of this section. *The Northam Bridge and Roads Co.* v. *The London and Southampton Railway Co.*, 6 M. & W. 428; 1 Railway Cases, 653; post, 380.

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road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road, and fifteen feet for a space of ten feet if over a public carriage road; and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet.

The clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private carriage road.

The descent made in the road, in order to carry the same under the bridge, shall not be more than one foot in thirty feet if the bridge be over a turnpike-road; one foot in twenty feet if over a public carriage road; and one foot in sixteen feet if over a private carriage road, not being a tramroad or railroad; or, if the same be a tramroad or railroad, the descent shall not be greater than the prescribed rate of inclination; and if no rate be prescribed, the same shall not be greater than as it existed at the passing of the special act. (*Id.*, s. 49, post, App., 172).

Construction of bridges over railway.

And every bridge erected for carrying *any road over the railway* shall (except as otherwise provided by the special act) be built in conformity with the following regulations: (that is to say),

There shall be a good and sufficient fence on each side of the bridge of not less than four feet, and on each side of the immediate approaches of such bridge of not less than three feet;

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike-road, and twenty-five feet if a public carriage road, and twelve feet if a private road;

The ascent shall not be more than one foot in thirty

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feet if the road be a turnpike road; one foot in twenty feet if a public carriage road; and one foot in sixteen feet if a private carriage road, not being a tramroad or railroad; or, if the same be a tramroad or railroad, the ascent shall not be greater than as it existed at the passing of the special act. (*Id.*, s. 50, post, App., 172).

Width of bridges need not exceed width of road in certain cases.

But it is provided, that, in all cases where the average available width for the passage of carriages of any existing roads, within fifty yards of the points of crossing the same, is less than the width hereinbefore prescribed for bridges over or under the railway, the width of such bridges need not be greater than such average available width of such roads; but so, nevertheless, that such bridges be not of less width, in the case of a turnpike road or public carriage road, than twenty feet: Provided also, that, if at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the company shall be bound, at their own expense, to increase the width of the said bridge to such extent as they may be required by the trustees or surveyors of such road, not exceeding the width of such road as so widened, or the maximum width herein or in the special act prescribed for a bridge in the like case over or under the railway. (*Id.*, s. 51, post, App., 173).

Existing inclinations of roads crossed or diverted need not be improved.

It is also provided, that, if the mesne inclination of any road within 250 yards of the point of crossing the same, or the inclination of such portion of any road as may require to be altered, or for which another road shall be substituted, shall be steeper than the inclination hereinbefore required to be preserved by the company, then the company may carry any such road over or under the railway, or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be

crossed, or of the road so requiring to be altered, or for which another road shall be substituted. (*Id.*, s. 52, post, App., 173).

Limitations of General Powers.

If the company cross, raise, cut through, sink, or use any part of any road, public or private, so as to render it impassable for, or dangerous, or extraordinarily inconvenient to passengers or other persons, or carriages, they are required, before the commencement of any operations, to cause a sufficient road to be made, instead of the road to be interfered with, and to maintain such road, (*Id.*, s. 53, post, App., 173); and, in default of making the substituted road, the company are liable to a heavy penalty; and any person sustaining special damage may maintain an action on the case. (*Id.*, ss. 54, 55, post, App., 173). If the road interfered with as above mentioned can be restored compatibly with the formation and use of the railway, the company are required to restore it; if it cannot be restored, then the company are required to cause some other sufficiently substituted road to be put into a permanently substantial condition; and the former road must be restored, or the substituted road provided, within a certain period, which is prescribed, otherwise a penalty is incurred. (*Id.*, ss. 56, 57, post, App., 174). If the company use or interfere with any road, they are required from time to time to repair and make good all damage done by them (*t*); and, in case of difference, two justices may decide the question in the manner prescribed. (*Id.*, s. 58, post, App., 174).

Before roads are interfered with, others must be substituted.

IV. The company are required to make, and at all times maintain (*u*), the following works, for the accommodation

Construction of accommodation works.

(*t*) See the cases as to the diversion, &c. of roads, collected post, 381.

(*u*) See the cases relating to the repairing of railway works, collected post, 385.

Construction of Accommodation Works.

of the owners and occupiers of lands adjoining the railway: (that is to say),

Such and so many convenient gates, bridges, arches, culverts, and passages over, under, or by the sides of or leading to or from the railway, as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made; and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof:

Also sufficient posts, rails, hedges, ditches, mounds, or other fences, for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout by reason of the railway, together with all necessary gates, made to open towards such adjoining lands, and not towards the railway, and all necessary stiles; and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be (*x*):

Also all necessary arches, tunnels, culverts, drains, or other passages, either over, under, or by the sides of the railway, of such dimensions as will be suffi-

(*x*) By 5 & 6 Vict. c. 55, (to the provisions of which special railway acts are now invariably made liable), it is enacted, that railway companies shall be under the same liability of obligation to erect and to maintain and repair good and sufficient fences throughout the whole of the respective lines, as they would have been if every part of such fences had been originally ordered to be made under an order of justices, by virtue of the provision to that effect in the acts of Parliament relating to such railways respectively. (Sect. 10, post, App., 23). The meaning of the above enactment is not very clearly expressed, and no specific remedy is pointed out.

Construction of Accommodation Works.

cient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be; and such works shall be made, from time to time, as the railway works proceed:

Also proper watering-places for cattle, where, by reason of the railway, the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering-places; and such watering-places shall be so made as to be at all times as sufficiently supplied with water as theretofore, and as if the railway had not been made, or as nearly so as may be; and the company shall make all necessary watercourses and drains, for the purpose of conveying water to the said watering-places (*y*):

Provided always, that the company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railway, nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive, and shall have been paid, compensation, instead of the making them. (*Id.*, s. 68, post, App., 177).

If any difference arises as to the kind or number of the accommodation works, or as to maintaining them, the same may be determined by two justices, (*Id.*, s. 69, post, App., 178); and if the company fail to obey the justices' order, the party aggrieved may execute the works or repairs himself, and the expenses shall be repaid by the company; and any dispute about the expenses shall be settled by two justices; but the railway must not be obstructed or injured for a longer time than is unavoidably necessary for the execution of the accommodation works. (*Id.*, s. 70, post, App.,

(*y*) See *R.* v. *The York and North Midland Railway Company*, post, 396.

Construction of Accommodation Works.

178). If the owners or occupiers of lands consider the accommodation works insufficient for the commodious use of their lands, they may, at their own expense, make such further works as shall be agreed by the company, or, in case of difference, as shall be authorised by two justices. (*Id.*, s. 71, post, App., 178). But if the company so desire, all such last-mentioned accommodation works must be constructed under the superintendence of their engineer, subject to certain restrictions. (*Id.*, s. 72, post, App., 178). The company cannot be compelled to make further or additional accommodation works after the expiration of a prescribed period. (*Id.*, s. 73, post, App., 179). Until the company make bridges, or other proper communications, between lands intersected by the railway, the persons whose right of way shall be affected may pass and repass with carriages, &c., directly (but not otherwise) across the railway; but if compensation has been received for such communication in lieu thereof, then no right of way may be exercised (*y*). (*Id.*, s. 74, post, App., 179). If any person

(*y*) As to what amounts to a receipt of compensation for the loss of communication between several portions of an estate, see *Manning* v. *The Eastern Counties Railway Co.*, 12 M. & W. 237; 3 Railway Cases, 637; ante, 248. A railway act enacted, "that it should be lawful for the owners and occupiers of lands through which the railway shall be made, (except in cases in which the company shall, at their own expense, have made communications from the land on the one side of the railway to the land on the other, according to an agreement with the owner, &c., or according to the provisions of this act), at all times, for the purpose of occupying the same lands, to pass and repass, and to lead horses, cattle, &c., directly over and across such parts of the railway as shall be made in or upon their lands." By another section, it was provided, that the company should, at their own expense, so soon as the railway shall be laid out and formed, make such communications as two or more justices of the peace shall, upon the application of the owners, &c., (in case of any dispute), judge necessary and appoint. Another section prohibited any person from riding, leading, or driving any horse, &c. upon the railway, "except only in directly crossing the same as aforesaid, at places *to be appointed* for that purpose, for the necessary occupation of the respective lands through which the railway shall pass." It was decided, that, until the company had made a communication, a party whose land had been severed

omits to fasten any gate set up on either side of the railway for accommodation, he is liable to a penalty. (*Id.*, s. 75, post, App., 179). *Construction of Accommodation Works.*

If the commissioners of a turnpike road, or the surveyor of any highway, apprehend danger to the passengers on such road, in consequence of horses being frightened by the engines on the railway, application may be made to the Board of Trade, who may certify what works are necessary or proper for the purpose of obviating or lessening the danger, (*Id.*, s. 63, post, App., 176); and the company must execute any screen or other work in pursuance of the certificate, or pay a penalty; and the justices who impose the penalty may order it to be applied in executing the work in respect whereof the penalty was incurred. (*Id.*, s. 64, post, App., 176).

The company, for the purpose of making the railway, may alter the position of water-pipes, gas-pipes, and other obstructions, under the restrictions and penalties prescribed by the act, (*Id.*, ss. 18, 19, 20, 22, 23, post, App., 163, 164), making good all damage, and giving compensation. (*Id.*, s. 21, post, App., 164). Interference with water-pipes, gas-pipes, &c.

The foregoing are the principal provisions contained in the Railways Clauses Consolidation Act, as to the mode of constructing the railway and the works connected therewith. The authority of the Commissioners of Railways, to sanction deviations in executing certain of the before-mentioned engineering works connected with the railway, has been treated of in a former part of this work (*z*). It now

by the railway had a right to pass from his property on one side of the railway to the other, at any point; and that the words "to be appointed" must be read with the addition of "when such places shall have been appointed." *The Grand Junction Railway Co.* v. *White*, 2 Railway Cases, 559.

(*z*) Ante, 87.

Cases.

Arrangement of Cases.

only remains to state in some detail such decided cases as appear to be calculated to illustrate the subject of this section. They are arranged as follows (*a*):—

Cases relating to the construction of stations.
———————*to the construction of temporary bridges.*
———————*to the construction of permanent bridges.*
———————*to the diversion of roads.*
———————*to the repair of railway works.*
Other cases not included in the foregoing subjects.

V. *Cases relating to the Construction of Stations.*

Although a railway act prohibits the company from having "a station or waiting-place" at a certain place, the company are not prohibited from taking up and setting down passengers at that place.

What is a "road" within the meaning of a railway act.

Eton College v. *The Great Western Railway*, (1 *Railway Cases*, 200).] —A bill for incorporating a company for the formation of a railway was pending in the House of Lords. In consequence of a petition presented by Eton College against the bill, the following clauses were introduced:—Sect. 99 enacted, that it should not be lawful for the company to alter or divert any part of the line of railway as then laid down, nor to make any other railway, tramroad, or other road or way to the south of the line, within three miles of Eton. Sect. 100 enacted, that it should not be lawful for any company or person to form, make, or lay down any branch railway, or tramroad, or other road or way whatever, passing or approaching within the same limits. Sect. 101 enacted, that no depot, station, yard, waiting, watering, loading, or unloading place should be made within the same distance. Sects. 102 and 103 enacted, that the company should erect and maintain a fence on each side of the railway, within certain parishes, for a distance of four miles; and should maintain a police for preventing all access to the railway by the scholars of Eton. The College continued their opposition until the bill, including the above clauses, passed into an act. The company diverted an existing road within the prescribed distance, and fenced off and appropriated part of the site of such former road as a passage communicating with the railway, by which passengers were invited to pass on foot to and from, and to be

(*a*) See the caution to be observed in applying these cases, ante, 190.

taken up and set down by the trains stopping at the end of such passage. They also hired two rooms in a public-house, erected at the entrance of such passage, and the same were used as a booking-office and waiting-place, in the same manner as the station-houses of the company were used.

Held, by the *Vice-Chancellor of England*, that the act did not prohibit the company from taking up and setting down passengers at that place.

Held, by Lord *Cottenham*, C., that, in this case, there being nothing of a parliamentary contract between the parties, the company were entitled to exercise the powers given by the act in any manner not therein prohibited; that the passage in question was not a road within the meaning of the 100th section; and that the house in question was not a station or waiting-place within the meaning of the 101st section.

Lord Petre v. *The Eastern Counties Railway Company*, (3 *Railway Cases*, 367).]—The Eastern Counties Railway Act, sect. 7, enacted, "that no road, wharf, yard, engine, station, loading or unloading places, warehouse, toll-house, building, machine or machinery, nor other erection, should at any time or times thereafter be made or erected by the company on any part of the estate of the plaintiff, nor within one mile of certain mansion-houses therein mentioned." The company, however, without such consent, erected a platform, and made steps to the top of the embankment of the railway, and set down and took up passengers, and otherwise used the platform, &c. as a station, and commenced making a carriage-road from a certain lane to the top of the embankment. The plaintiff obtained an injunction restraining the company from using the station, platform, stairs, steps, carriage-road, and other works and erections for the purpose of communicating with the railway, or for the purpose of taking up or setting down passengers, and from stopping at or near the said station or the platform, for the purpose of taking up or setting down passengers or goods, and from establishing or using any other or further works, buildings, or erections upon either side of their railway at the place where the same was traversed by Stock-lane, and from making and using any road or way to communicate with the said railway at or near the same place, and within one mile of Ingatestone-hall, without the license and consent of the plaintiff.—The *Vice-Chancellor of England*, on motion to dissolve, decided that the whole injunction should be

Same point as *Eton College* v. *The Great Western Railway Co.*, ante, 360.

Cases.

Construction of Temporary Bridges.

obstruct the navigation of the canal, or any part thereof; and specified the height and dimensions of any bridge to be made and maintained for carrying the railway over the canal. The company, for the purpose of transporting earth from the higher lands on the south, to the lower lands on the north side of the canal, for constructing an embankment, erected a temporary bridge over the canal, supported partly on piles driven into the bed of the canal. The defendants pulled down such bridge, and thereby destroyed the passage of communication for the carriage of the earth. It was decided by Sir *C. C. Pepys*, M. R., on a motion for an injunction to restrain the defendants from destroying such bridge, or preventing any such communication, that the clause empowering the railway company to cross canals in the progress of their works was not restricted by the subsequent clauses, which applied to permanent bridges; and His Honor therefore restrained the defendants from obstructing the making or use of such passage of communication. (See also *The Attorney-General* v. *The Eastern Counties Railway Company*, 3 Railway Cases, 337; post, 395).

The plaintiffs having offered to undertake not to interfere with the canal otherwise than as authorised by the act, such undertaking was adopted by the Court, and will have the effect of an injunction so far, that the defendants will be enabled to make any infringement thereof the subject of an application to the Court.

Semble—Although a railway company are not to act capriciously in regard to carrying out the powers of an act of Parliament, the act constitutes them the judges of the most convenient mode of conducting their works.

If a railway company are authorised to erect a temporary bridge for a particular purpose, they may use the bridge for other purposes, provided no additional injury is thereby caused to the navigation.

Priestley v. *The Manchester and Leeds Railway Company*, (2 *Railway Cases*, 134; 4 *Y. & Col.* 72).]—The Manchester and Leeds Railway Act enabled the company to make the railway in a prescribed course. The 34th section, reciting that the railway was to be carried across the Aire and Calder Navigation at three specified places, required the company to erect bridges at such three crossings, and prescribed the dimensions of such bridges. The 38th section provided that the company should, during the progress of constructing such bridges, leave an open uninterrupted navigable waterway, of a specified height and extent. The 42nd and 44th sections provided that the railway company should not make any bridge over the navigation, and, generally, should not interfere therewith otherwise than as provided for by the act. The 94th section empowered the com-

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pany, subject to the restrictions imposed by the act, to make and maintain the railway, and to construct, in, under, upon, across, or over any hills, valleys, roads, rivers, canals, brooks, or streams, or other waters, such embankments, bridges, aqueducts, and conduits, either temporary or permanent, and to erect and construct such buildings, engines, machinery, apparatus, and other works and conveniences for the purposes of the act, as the company should think proper.

By an agreement, made between the navigation and railway companies, and afterwards embodied in an act of Parliament, the line of the railway was changed, by which change the navigation was crossed only once by the railway, and only one bridge required. The railway company had introduced into the above agreement a clause enabling them to erect temporary bridges across the navigation, but which was struck out by the navigation company. The railway company, having commenced the building of the permanent bridge, erected a temporary bridge adjoining to the permanent bridge, which was used partly for building that bridge and partly for conveying earth and materials across the river. On the application of the navigation company, an injunction was granted ex parte, restraining the erection of a temporary bridge across the navigation, or of anything impeding the navigation, in a manner not authorised by the act. Affidavits were filed on both sides, and, upon motion to dissolve the injunction, it was decided, that, subject to the restrictions of the act, the 94th section ought to be liberally carried into effect; that the railway company had the power of erecting such a temporary bridge, the power being exercised reasonably and bonâ fide; that, in construing such power, with a view to its reasonable and bonâ fide exercise, regard must be had to the peculiar purpose for which the permanent bridge was designed; that the temporary bridge, being of the dimensions specified in the 34th section, and a navigable waterway being left, as required by the 38th section, the same was lawfully erected under the 94th section, for the bonâ fide purpose of building the permanent bridge; that the temporary bridge, being erected and used for a lawful purpose, might also be used for other purposes, for which alone it could not have been erected; and that, subject to the restrictions of the act, the company, acting bonâ fide, were constituted the judges of the mode of executing their works.

In delivering judgment, *Alderson*, B., said:—The 94th section gives the company power to enter the lands of all persons, under the

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provisions and subject to the restrictions of the act, and to make and construct a variety of works, bridges, tunnels, and embankments, either temporary or permanent, as they shall think proper. Therefore, they had power—not, to use the language of the Lord Chancellor, an arbitrary or capricious power, but a power to be exercised judiciously by them, as reasonable and skilful men, judging of the necessity of the case—to erect any works for the purpose of the undertaking. And, in considering whether such a bridge is built as reasonable and skilful men, exercising a proper judgment, would build, we must remember that these bridges are built on a railway; and it must be considered, with reference to that circumstance, whether it is such as the company, executing their power fairly and discreetly, are competent to build. Now, when one sees a bridge in a railway near an embankment on one side and the other, it is not unreasonable to say that the railway company should have the advantage of erecting the embankment as well as the railway; and we ought not to regard the bridge as erected on the ordinary plan of bridges, but of bridges on railways, the essential qualities of which are, that they should be level, and within a certain compass. Now, the 94th section gives the company power to erect bridges, subject to the previous restrictions in the act; and if this bridge is not within the restrictions prescribed by the antecedent parts of the act, the injunction ought to be continued; but, subject thereto, the provisions of the 94th section ought to be carried into execution. Now, what are the restrictions in the act of Parliament? The first material one is in the 34th section. According to that section, the company, in crossing the river Calder, are not to cross it in their discretion, in any way convenient for the purpose of the railway, but in such way, and under such restrictions, as the railway act says are not impediments to the navigation; therefore, the act of Parliament gives a particular requisition, "that they shall, at their own expense, under the inspection of the engineer of the undertaking, and according to plans to be submitted to and approved by the respective engineers of the said undertakers and the said railway company, make and execute, at each of the said crossings, (over the river Calder), a good and substantial bridge of stone, brick, or iron, of three arches, over the said river, and the towing-paths thereof respectively, with proper approaches thereto, with perpendicular foundation-walls to such bridges, and without any projections under water," thereby making the waterway complete, perpendicular, and full as it was before, and

the towing-path free and accessible. Now, that section enables the party to make a particular sort of bridge. That may be well consistent with the 94th section. Though it is a particular sort of bridge, yet the company, in building it, may be guided by the provisions of the 94th section, and have the power of uniting it with the embankments on either side, which are to be part of the railway; therefore the two sections stand together. But then we find another restriction imposed by the 38th section; because it occurred to the Legislature, that, although, when the bridge was constructed, the Aire and Calder Navigation would have three arches, which would give a large waterway, yet the building of them might leave a considerable obstruction to the navigation; therefore the Legislature determined that there should be a limited obstruction, even during the period of making the bridge. Now, the most ordinary observer must have noticed, that bridges cannot be erected without centres before the key-stone is put in to support the arch. Then, inasmuch as, by the 34th section, the underside of the opening at the key-stone was described as "not being less than thirty-feet above the ordinary level of the water," it occurred to the Legislature that it could not be possible, during the erection, to leave so high a waterway, and that, possibly, unless some temporary erection were permitted, the builders might erect piles to support the centres, and bring the centres so low as to materially impede the navigation; and, therefore, by the 38th section, they enacted, that the company should, during the construction of the bridges, or the necessary repairs thereof, leave an open uninterrupted navigable waterway of not less than thirty feet in width and twenty feet in height, above the ordinary surface-water, if the undertakers should consider it necessary; and, further, they provided that the towing-paths, where convenient, should remain, and a space should be left during the construction sufficient to prevent damage to the adjacent lands. That was the 38th clause, and, with the exception of the 38th and 34th clauses, there are no clauses material as to the construction of the bridges. The substance of these enactments is, that the company may construct bridges in a particular manner over the river, and may obstruct the river, (in the progress of their works), provided they leave a sufficient quantity of water. Then come the 32nd and 44th sections, which protect the rights of the Aire and Calder Navigation Company. By the latter section it is enacted, that nothing shall affect the rights of the undertakers, or authorise or empower the railway company to obstruct

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the navigation of the river, or to divert the waters, "save as hereinbefore provided;" that is to say, except during the time mentioned in the 38th section. Therefore, if the undertakers shew that the temporary bridge is not for the purpose of making a permanent bridge, or that it is so constructed as to encroach on the towing-path, or not to leave a waterway of thirty feet by twenty, or not a sufficient space besides that, so as to carry off the water of the river, it would be an "apparatus," which, though coming under the 94th section, could not, coupling the 94th section with these, be permitted to be erected; but I apprehend it comes within the required conditions; that is to say, that it is for the purpose of erecting a permanent bridge, and that it does leave sufficient waterway within the meaning of these sections: and, if all these circumstances concur, then the only question is, whether the circumstance of its being also used for some other purpose, for which alone it would not be competent to use it, is to make any difference in the present case. Now, if that further use made it more inconvenient to the navigation company than if it were only used for one purpose, I think there would be ground for the interference of the Court against the railway company; and, taking that to be the principle of the present decision, let us look to the affidavits, to see whether they shew any such inconvenience. [The learned Judge referred to the affidavits.] But it is said, there are several circumstances to shew that this was not bonâ fide; and the plaintiffs rely on the negotiation which took place between the parties, which ended in an agreement, into which a clause was sought to be introduced, which was struck out; and they say that such clause was for making temporary bridges for embankments. Now, treating it as general for the purpose of making embankments, —treating it so, I do not think it competent for the company to erect temporary bridges for the purpose of making embankments, if, in carrying over the materials for that purpose, they obstruct the navigation of the Aire and Calder; but that they may do so, if, having already a right to obstruct the navigation by building temporary bridges, they do not, by using those bridges for raising embankments, make any additional obstruction; and in this I think that this case differs from the case before the Lord Chancellor (*a*). There his Lordship held, that the Birmingham Railway had the power to erect temporary bridges, on the condition that they should not ob-

(*a*) When M. R., see ante, 364.

struct the navigation. In this case, it seems to me that the company have no right to make any bridge for any other purpose than that of carrying into effect the works which they are allowed to make, but that, in carrying those works bonâ fide into effect, they may use the bridge for another purpose, if the consequence is no further impediment to the navigation. I come, therefore, to the conclusion, that this bridge was reasonably and bonâ fide erected for the double purpose; and that, as the double purpose produces no more inconvenience at present than the single purpose would, the injunction must be dissolved; but, if the company keep the temporary bridge after the erection of the other, or in any manner malâ fide, they will be in a situation of difficulty. Injunction dissolved.

VII. *Cases relating to the Construction of Permanent Bridges.*

To what extent a railway company may interfere with a river navigation by erecting a bridge.

Manser v. *The Northern and Eastern Counties Railway Company*, (2 *Railway Cases*, 380).]—A railway company, in the progress of their works, proposed to cross a mill-stream by a bridge, to be supported in the centre of the mill-stream by two piles, placed sixteen feet apart. The bridge was to be six feet in height above the level of the water. The plaintiff, the owner of the mill, asserted that the height was insufficient to allow the barges to pass under, and also that placing piles in the stream would impede the flow of the water, and thereby stop the working of the mill. The company adduced affidavits of engineers to shew that the level of the railway, and the nature of the ground upon which the embankments were founded, prevented them from making the bridge of a greater height; and they also shewed, that, over a public navigable river which was connected with the mill-stream, there were some bridges only six feet high; and moreover, that, at the time of the passing of their act, there was over this mill-stream a bridge of that height, though such bridge had since been pulled down by the plaintiff, and re-erected of a greater height; and that the flow of the water would be in no way impeded by the piles. The plaintiff adduced affidavits of engineers to shew, that, although some of the bridges over the navigable river were of the height of six feet only, yet that the water under them could be lowered by waste-gates; that, to obtain a perfect level on the line of

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the railway, the embankments, and consequently the bridge over the mill-stream, ought to be raised two feet. It was decided, by the *Vice-Chancellor of England*, that, the act authorising the company to conduct their works, doing as little damage as possible, the plaintiff, under the circumstances stated, was not entitled to require the company to build the bridge at the height of more than six feet. The plaintiff appealed.

Lord *Cottenham*, C., said, in delivering judgment, "I cannot safely dispose of this case upon the evidence now before me without examining the affidavits more minutely. I certainly feel, as I have in all these cases, that I myself am much less capable to make an order that would be perfectly just between the parties than might be obtained by calling in some professional assistance, indifferent to both parties, who would state to me what the result of them is, on the exercise of that engineering science which I do not possess, even if certified as to the facts. But I have no doubt whatever upon the construction of the act. The company undoubtedly have powers to take land, if they think proper, within the limits prescribed by the act; and I will assume that they have a right to adopt any level which they please; but then they cannot do that capriciously; and, having got into a certain level, they cannot part with that level and come down on the plaintiff's stream of water and destroy the interest in that stream of water without some very cogent reason for so doing. The only way to try that is to take a case, and I will take this case. Here they say they have left sufficient space, and have not so interfered with the water as to create a damage to the parties interested in the navigation of it; but if that be the construction of the act, they had a right to come down and destroy the navigation, or to bring their bridge so close to the surface of the water as entirely to impede the navigation. That could not be done except in cases of extreme necessity; and the act has clearly and carefully, and also very intelligibly, laid down the rule that they are to follow. They may do what is necessary for the purpose of carrying through the works which the act authorises them to carry on, but, in doing that, they must do as little damage as may be. If they cannot carry on the works without doing certain damage, if it is land, they are bound to purchase it; if it is not land, but some interest which is affected by it, they are bound to compensate the party in money; but if the damage to be done is not a necessary consequence of the works they are to carry on, then this Court, being

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apprised of what is in progress, will interpose to prevent it: because, in that case, it is an excess of the power given by the act; the act only authorising them to carry on their works, doing as little damage as may be. If they think proper to carry on the works, doing more damage than the necessity of the case requires, then the Court will interfere. That being the construction which I have always put on these acts, and which, I believe, all other judges have done, the question is, whether this case comes within that rule of construction. I find in this case, certainly, a very peculiar state of facts, because I find the railroad proceeding up to certain points on each side of the locus in quo on a certain level, and then the level is altered, and assumes a lower level, and is gradually lowered, until it reaches the particular point in question, which I understand to be the lowest point of the level on which the railroad runs; and from this particular point it rises to the level which it pursues in other places. I certainly have not been at all satisfied of the existence of the necessity that the company should adopt that course. It has been attempted to be explained on the affidavits, and it may possibly be so; but it has not satisfied my mind that there is any necessity for that; nor have I been able to comprehend how it is that the bank upon which the railroad is to run may be safely carried to the height to which it has been carried, and cannot safely be carried a foot higher. It is so stated in the affidavits; and that raises a proposition so difficult to comprehend, considering the weight which these railroads are destined to carry, that I must confess I have great doubt whether I can act upon any such assumption." [His Lordship then proposed a reference to a disinterested engineer of eminence; and the case was ultimately compromised.]

Construction of a special act as to the width of a road under a railway bridge.

The Attorney-General v. *The London and Southampton Railway Company*, (9 *Sim.* 78; 1 *Railway Cases*, 302).]—The London and Southampton Railway Act (sect. 9) empowered the company to make, in, upon, across, under, or over any lands, streets, hills, vallies, and roads, such inclined planes, tunnels, embankments, bridges, arches, and piers, as the company should think proper, according to the provisions and subject to the restrictions of the act. Sect. 74 provided, that, where any bridge should be erected by the company for the purpose of carrying the railway over or across any turnpike road or other public highway, the span of the arch should be of such width as to leave a clear and open space under every such arch of not less

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... *Railway Company*, (3 *Q. B.*
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... by another act (enabling the company
... incorporated (s. 38) to carry the line of
... public road by means of a bridge of the
... and for that purpose to lower the
... it so doing were required to leave a
... the bridge, and headway under it,
... the road. The company made a bridge
... road forty-two feet wide, consisting
... two footways of six feet each. They
... the road, but left the footways at their
... remain traverses to a return to a man-
... company to re-form the road, and to
... forty-two feet, the jury found, 1st, That
... lowered the road; 2nd, that they had re-

th the act; and 3rd, that the road
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Railway Cases, 523; 2
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pike road"—is confined to that part of the road
part of the same section, is called the carriage-
er it comprises not only the carriage-road, but the
. And we are of opinion, that, looking to the object and
r which the bed of the turnpike road is directed to be
d, the statute intends no more by that expression than the
riage-road. That purpose is, to enable carriages to pass with per-
fect safety, by giving them a clear and uninterrupted headway of
eighteen feet at the least under the bridge; an object which is per-
fectly attainable without making, and is wholly independent of, a
corresponding alteration in the level of the footway. But a further
question remains: and it was urged, that, however the case may be
with respect to the footway, the carriage-road ought at all events to
be lowered to the full width of the former carriage-road, which is
found by the jury not to have been done. If the section just referred
to had contained any express enactment to that effect, it could not be
contended that the superior convenience to the public of the road as
made would furnish an excuse for a deviation from the express

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enactment of the statute; but it is admitted, that there is no express provision to this effect, nor does it appear to us that there is any sufficient ground for holding that such a provision is to be implied; the expression, "unless the same shall be lowered at their own expense, on both sides of such bridge," upon which the Court of Queen's Bench appears to have placed some reliance, as tending to shew that the whole road was included, appearing to us to apply, not to the right hand side and the left hand side of the bridge, as a person passes under it, but to the part of the road lowered as it descends to the bridge on one side, and ascends from it on the other. The company are undoubtedly bound, in making their alteration, to make it in the manner most convenient to the public. This is required, not only by the nature of the powers confided to them, but by the express condition annexed to the exercise of those powers by the statute, (s. 94). That statute authorises them, amongst other things, to raise or sink any roads or ways, and to do and execute all other matters and things necessary or convenient for constructing the railway and works, doing as little damage as may be in the execution of the several powers granted to them; and by the subsequent statute those powers are continued, and rendered applicable to all the objects of the latter act; but subject to this restriction—of consulting, as far as possible, public and private convenience. We see no sufficient reason for implying any condition not expressly required by the terms of the 38th section. As to any argument arising from a notion of inconvenience from the mode in which the works have been performed, that matter is concluded by the finding of the jury, which is full and explicit on this point. Judgment reversed.

Construction of a special act as to the width of a bridge erected over a highway.

Regina v. *The London and Birmingham Railway Company*, (1 *Railway Cases*, 317).]—By the London and Birmingham Railway Act, the company are empowered to make roads over the railway, and, for that purpose, to alter the course of or raise any road or way. Sect. 63 provides, that when any turnpike road or public carriage road shall be carried over the railway, the road shall be of the clear width of fifteen feet, within the fences of the bridge; and by sect. 67, where any part of any carriage or horse-road shall be cut through, raised, sunk, or taken, the company shall cause another good and sufficient road to be made instead thereof, as convenient for passengers and carriages as the former. The company diverted a highway, and erected a bridge to carry it over the railway. The original road was

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forty feet wide, and the substituted one only twenty-seven, less convenient for driving sheep and cattle. The span of the bridge was thirty-three feet, but it was continued with wing-walls and parapets to the distance of 168 feet; and the width of the road on the bridge and between the parapets was only sixteen feet.

It was decided by Lord *Denman*, C. J., at Nisi Prius, that the new road, being narrower, was not as convenient as the old one, nor a good and sufficient road within the meaning of the 67th section, the act intending it to be as convenient for a drift-way as for passengers and carriages. Held, also, that fifteen feet is the maximum width required by the act for such bridges; but that the company had no right to contract the road by the wing-walls and parapets beyond the span of the bridge.

Construction of a special act as to the width of the approaches to a bridge erected across a railway.

A return that a railway company cannot obey a writ of mandamus is bad.

Regina v. *The Birmingham and Gloucester Railway Company*, (2 *Q. B.* 47; 2 *Railway Cases*, 694).]—By a railway act a company were empowered, subject to the provisions and restrictions of the act, to make or construct, upon, across, under or over the railway, such roads as the company should think proper. By sect. 41, when any part of any road, either public or private, should be cut through, raised, sunk, taken, or so much injured by the company as to be impassable or inconvenient, the company, before any such road should be so cut through, raised, &c., were to cause another road to be set out and made instead thereof, as convenient as the said road so cut through, raised, &c., or as near thereto as might be; and where the road cut through, raised, &c. should be a turnpike road, the substituted road, if temporary, was to be set out and made, and the principal road restored, within six months after commencing the operation. By sect 47, where any bridge should be erected for carrying any turnpike road, public highway, or occupation road over the railway, the road over such bridge was not to be less than fifteen feet. A mandamus, reciting that the company had, in November, 1838, (after the compulsory powers given to the company for taking land had expired), cut through and taken part of a turnpike-road, forty feet wide, and had made a bridge thereon for carrying it over the railway, the said bridge and the approaches (which were about 150 yards in length on each side of the bridge) being about thirty feet wide only, commanded the company to restore the turnpike road according to the act.

Held, by the Court of Queen's Bench, that the company were

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enactment of the statute; but it is admitted, that there is no provision to this effect, nor does it appear to us that there is sufficient ground for holding that such a provision is to be implied. The expression, " unless the same shall be lowered at their own expense on both sides of such bridge," upon which the Court of Queen's Bench appears to have placed some reliance, as tending to show that the whole road was included, appearing to us to apply to the right hand side and the left hand side of the bridge where the road passes under it, but to the part of the road lowered to the bridge on one side, and ascends from it on the other. The company are undoubtedly bound, in making their alterations, to do so in the manner most convenient to the public. They are bound only by the nature of the powers confided to them, and by the condition annexed to the exercise of those powers (s. 94). That statute authorises them, amongst other things, to sink any roads or ways, and to do and execute all other things necessary or convenient for constructing the railway, doing as little damage as may be in the execution of the powers granted to them; and by the subsequent statute they are continued, and rendered applicable to all the railways, but subject to this restriction—of consulting public and private convenience. We see no reason to imply any condition not expressly required by the statute. As to any argument arising from a notion that the mode in which the works have been executed is excluded by the finding of the jury, we do not think the point. Judgment reversed.

Construction of a special act as to the width of a bridge erected over a highway.

Regina v. *The London and Birmingham Railway Company*, *Railway Cases*, 317).]—By the London and Birmingham Railway Act, the company are empowered to make the railway, and for that purpose, to alter the course of certain highways. Sect. 63 provides, that when any turnpike road shall be carried over the railway, the bridge by which it is carried shall be of a width of fifteen feet, within the parapets, at the least; and that where any part of any carriage road, not being a turnpike road, shall be raised, sunk, or taken, the company shall make a sufficient road to be made instead thereof, not exceeding thirty feet, and carriages as the former road was adapted for; and that such road shall not be erected a bridge to carry

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When a street may be lowered to obtain the necessary height under a bridge, notwithstanding the provisions of a local paving act.

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bound to make the approaches as wide as the turnpike road had been. And held no sufficient return, that the approaches, though of a less width, were as convenient to the public as they could be made in execution of the powers of the act, and as convenient to the public as the original road had been; or that the company could not now widen the approaches without taking and purchasing more land; that their compulsory powers of purchasing under the act had expired before they were called upon to widen; and that they had not then, nor have since had, the power to take or purchase land for such purpose. In the judgment of the Court, the following remarks were made on the case *The Attorney-General* v. *The London and Southampton Railway Company*, (1 Railway Cases, 302; ante, 371):—"It remains for us to notice a case cited in the course of the argument, in which, as was said, the Vice-Chancellor has put a different construction upon a clause in another act of Parliament resembling the present. It is true that his Honor does, in that case, intimate incidentally such an opinion as has been attributed to him: the question before him then being, whether he should declare by his order a certain archwork of the said company to be a nuisance, and prohibit them from further prosecuting their works, because they were about to abridge the width of a public highway. The point, however, which now comes before us seems to have been very slightly touched in the argument, and was wholly unnecessary for the decision of the Vice-Chancellor, which was, that, provided the said arch be 'not less' than the width prescribed by the act of Parliament, he did not feel himself justified in making the order desired. The Vice-Chancellor also gives as a further reason for not making that order, that many other methods were open to raise the question (alluding especially to an indictment for a nuisance) without his interference. We cannot, therefore, consider this to have been the deliberate judgment of the Vice-Chancellor upon this subject."

Construction of a special act as to the ascent to a bridge.

The Attorney-General v. *The London and Southampton Railway Company*, (1 *Railway Cases*, 283).]—The London and Southampton Railway Act directs, that, where any bridge shall be erected for the purpose of carrying any turnpike road over or across the railway, the ascent to such bridge shall not be more than one foot in thirty feet, except where the "present inclination" of such turnpike road shall be steeper, in which case the inclination of such road shall not be steeper than the present inclination of such road.

The *Vice-Chancellor of England* decided, that the expression "present inclination" is to be referred to the inclination of a road at the time when taken by the company; that the exception applies as well to a bridge built on a new or diverted road made by the company, as to a bridge built on the site of a previously existing turnpike road; that the relative steepness of a new or diverted road, and of an old road, is to be determined, not by their comparative acclivity, measuring the whole length of each from the commencement to the end of the deviation, but by a comparison of the rate of ascent on the new road from the place of diversion below the bridge to the crown of the arch of such bridge, with the rate of ascent on the old road from the same place, to the point on the old road at which, if the two roads had been parallel, the same distance would be attained.

When a street may be lowered to obtain the necessary height under a bridge, notwithstanding the provisions of a local paving act.

Regina v. *The Eastern Counties Railway Company*, (2 *Q. B.* 569; 3 *Railway Cases*, 22).]—By a railway act, a company were empowered to raise or lower any roads or ways, in order the more conveniently to carry the same over or under or by the side of the railway. By sect. 100, where any bridge should be erected by the company over any public carriage road, not being a turnpike road, the centre of the arch must be of a height from the surface of the road of not less than sixteen feet. By sect. 120, nothing in that act is to derogate from any of the rights or privileges of any parish over which the railway shall pass, acting under any local act. By a local paving act it was enacted, "That no person shall alter the form of any pavements which shall be now made by virtue of this act without the consent of the commissioners, or in anywise encroach thereon, or put up any posts, boards," &c. A mandamus having issued, a return was made, and the question raised was, whether the railway company were authorised to lower the pavement of a street, for the purpose of giving sufficient headway to a bridge.

Coleridge, J.—The commissioners do not dispute the right to carry the railway on the arch, nor is it alleged that the proposed lowering of the pavement would make the descent more than one foot in twenty; but they deny the right to alter, or in any—the slightest—degree to meddle with, the pavement. If the question stood on the two clauses alone, there could be no doubt. The 9th in express terms contemplates the lowering of the roads, and the 100th, when it limits the steepness of descent under an arch, clearly looks to an alteration of level to be produced by the railway works. If there were a natural

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descent of any conceivable steepness under an arch erected by the company, they would not be bound to reduce it to the limits prescribed by the section. But it is said that the powers of the 9th section are expressly given, subject to the provisions and restrictions of the act, and that one of the provisions included in these general words is to be found in the 120th section, which provides that "nothing in the act shall extend to prejudice, derogate, or diminish any of the rights or privileges of any parish over which the railway shall pass, acting under and by virtue of any local act." The parish of Christ Church is then said to be within these words, because the paving, &c. are, by a local act, placed under the control of commissioners, in whom the pavements are vested. The same statute enacts, "that no person shall alter, or cause to be altered, the form of any pavement, which shall be new made by virtue of this act, without the consent of the commissioners, or in anywise encroach thereon." If this had been the whole section, it would have been very questionable whether it could have been construed so as to restrain the company from exercising powers plainly given under an act so long posterior in point of time, and which, in many instances, are so essential to the carrying out the purposes of their act. It would also be very questionable whether a local act, such as the one in question, comes within the meaning of the 120th section of the railway act. That section saves the rights and privileges of any parish acting under any local act,—words which seem not very applicable to the case of the paving and lighting of a parish being placed under the management of commissioners. This section, indeed, follows as a proviso on a section which gives a mode for indemnifying parishes as to their poor and other rates, where they would be otherwise diminished by the rendering houses and other property unrateable during the construction of the railway; and it seems rather intended to save the peculiar rights which local acts might have given to particular parishes, as to the modes of assessment and collection. But, without deciding the question on these suppositions, it seems to us that the point is clear when the whole section is looked at. After the words already cited, on which the prosecutors rely, these immediately follow: "or put up any step or steps, or erect any bulks or stalls, or place out any show-glasses, or make any dungholes or sawpits, or other matters or things, so as to be an encroachment, upon pain of forfeiting, for every such offence, any sum not exceeding 5*l*. It is clear, then, that this section was inserted merely as a police regulation, to prevent what

are commonly called street nuisances and encroachments; and the words "form of the pavement" are well suited for such a purpose. To lower the street and re-lay the pavement in the same form and of the same dimensions, but on a different level, is scarcely to alter the form of the pavement; and we should be straining the words beyond their natural meaning to include a case never contemplated by the Legislature, if we were to give them the force contended for by the prosecutors. Their counsel also relied on a section in the same act which vests the property of the pavements in the commissioners; but this appears to us immaterial. The company, by what they propose to do, will not interfere with the property, which must, of course, in every case, be in some person or body; and the act which incorporates them expressly authorises them to lower roads. Judgment for the defendants.

Construction of special act as to the right to erect a bridge at a different angle from the former road.

Regina v. *Sharpe*, (3 *Railway Cases*, 33).]—By a railway act, a company were empowered "to divert or alter any roads or ways, in order the more conveniently to carry the same over or under the railway." The company, in carrying a road under the railway, had erected a skew bridge, which diverted the road to an angle of 45°, instead of 34°, which was the angle made at that particular point by the old line of road. At the trial of an indictment against the company's engineer for so doing, *Alderson*, B., (having consulted *Parke*, B., (*a*)), directed the jury, that, as the only way for the company to resist the charge was, to shew that the bridge complained of had been built in conformity with the act of Parliament, the question in substance was, what was the most proper way to construe it. The word "conveniently" meant more conveniently upon the whole for carrying into effect the purposes of the act; and, if the work was done in a mode in which an experienced engineer would construct it, having reasonable regard to the interests both of the company and

(*a*) *Parke*, B., said, that, in a case which had been tried before him as to the power which a company had to make a railway over a public highway, he laid it down, that, "if possible, the work must be constructed without any inconvenience to the public; but if it could not be done without some such inconvenience, it must be done with the least possible, according to the provisions mentioned in the act." This was the case of *Reg.* v. *The London and Southampton Railway Co.*, tried at the Hants Summer Assizes, 1838, in which his Lordship held, that mere expense was no reason for not making a road over the cutting as convenient as before.

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the public in the construction of it, it was to be looked upon as being in conformity with the intention of the act; that it was, therefore, for the jury to say, whether there was any practical inconvenience arising to the public by the road being diverted more obliquely than before. If the public would sustain such inconvenience, then, as it was clear that the bridge could be so made, and no convenience was added to the public by its not being so made, the verdict should be for the Crown; but, if they thought that no material practical inconvenience was sustained by the public in having the present bridge instead of the other of 34°, as it would be across the original road, and that an experienced engineer would have so constructed it, having regard to the interests both of the public and the company, they had a right to make such a diversion in building the bridge, and the verdict should be for the defendant. The jury found a verdict for the defendant; and the Court of Queen's Bench decided that the ruling of the learned Judge was right, and refused to grant a new trial.

When the construction of a special act will be submitted to a court of law.

Northam Bridge and Roads Company v. *The London and Southampton Railway Company*, (6 *M. & W.* 428; 1 *Railway Cases*, 653).]—A railway act (ss. 70 and 71) provides for the crossing by the railway of roads, not being turnpike roads. The 72nd section provides, that a turnpike road which shall be crossed by the railway shall be raised or sunk so as to pass over or under the railway. The railway being proposed to cross the Northam-bridge-road in the mode provided for by the 70th and 71st sections, the plaintiffs, the proprietors of the road, filed their bill, insisting that the road was a turnpike road, and praying to restrain the railway company from crossing over or using the same until they should have complied with the 72nd section. On a motion for an injunction, the *Vice-Chancellor of England*, being of opinion that the road was not a turnpike road, and therefore not within the 72nd section, refused the motion, but, on the application of the plaintiffs, directed a case for the opinion of a court of law upon the question. A case was accordingly sent to the Court of Exchequer, and a certificate returned by the Judges of that court, stating, that the Northam-bridge-road was a turnpike road. An application by the railway company to send the legal question before another court of law was refused. Upon a motion for the injunction consequent upon the certificate, it was decided, that, as the object of the plaintiffs must be to procure for the public using the

road a compliance with the 72nd section of the railway act, upon the railway company entering into an undertaking to proceed with and complete a bridge over the road with all possible despatch, an injunction ought not to be granted during the time that must necessarily elapse in building the bridge.

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VIII. *Cases relating to the Diversion of Roads.*

If a railway company stop up an old road, without substituting a new one, in pursuance of the provisions of a special act, they are liable to be indicted for a nuisance.

Regina v. *Scott*, (3 *Q. B.* 543; 3 *Railway Cases*, 187).]—By a railway act, a company was empowered (sect. 94) to divert or alter the course of any roads or ways, in order the more conveniently to carry the same over or under or by the side of the railway. By sect. 97, in all cases wherein, in the exercise of such power, any part of any carriage road, &c. should be found necessary to be cut through, raised, sunk, taken, or so much injured as to be impassable or inconvenient for passengers and carriages, &c., or to the persons entitled to the use thereof, the company should, at their own expense, before any such road, &c. should be so cut through, cause a good and sufficient carriage road, &c. to be set out and made instead thereof, as convenient for passengers and carriages as the former road, or as near thereto as might be. The company had diverted a highway, and obstructed the old road by building a wall across it, and had made a new road, which was neither as convenient to the public as the old one, nor as near thereto as might be. It was decided that the company were liable to be indicted in the common form, for so obstructing the highway.

The company, when making their railway, stopped up the public highway mentioned in the indictment, called Goodier-lane, and made a branch, restoring the communication between the termini formerly connected by that lane, but by a different line. The new road was stated to be in some respects more convenient to the public than the old, but in others less so. The levels of the adjacent land made it impracticable to give a more convenient line consistently with the regulations of the act, unless at an expense which, it was said, would be unreasonably great, and quite disproportioned to the benefit which would accrue from it to any part of the public.—*Maule*, J., directed the jury to find a verdict of not guilty, if they thought that the company had done no more damage than was necessary, and had made the road as convenient as the former one, or as nearly so as might be;

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intimating, as his own opinion, that the road made by the company could not be deemed absolutely as convenient, even after allowing for the advantages which the public might have gained from it. But he stated, that the company were not, in his opinion, bound to lay out enormous sums of money to procure a slight accommodation to some persons; and that the proper rule seemed to be, that, if they could not make the road as convenient as before without a very disproportionate and unwarrantable expenditure, they should make it as nearly so as they could; and he left it to them to say whether the new road was as convenient as before, or, if not, as nearly so as it might be. The jury found a verdict of guilty on two counts, (including that first mentioned), and not guilty on the others. A rule nisi for a new trial was afterwards obtained.

Lord *Denman*, C. J., said, in delivering judgment.—The defendants were convicted of a nuisance in obstructing a highway. They pleaded not guilty, and proved on the trial that the obstruction was caused by the exercise of certain powers conferred by their act of incorporation. Their offer to remedy the evil appeared to us so reasonable, that we pressed the prosecutors to accept it, and hoped to be spared the necessity of deciding the question of law by which the defendants sought to shew that what they have done is lawful. The prosecutors, however, who are the surveyors of the highways, crave our judgment on this point. The work complained of as a nuisance, and undoubtedly making one, is the cutting through of the carriage road. Now, there is no question as to their right to do this; and though they are required, when they do it, to cause another road to be set out and made instead of it, they argue that they are no longer indictable for a nuisance in doing the lawful act, however they may for disobedience of the law in neglecting to substitute another. The prosecutors reply by referring to the section (97) which requires the company to cause a new road to be made before they cut through the old. But the company rejoin, that, from the state of the earth there, it was impossible to do this, and could not be intended by the Legislature. This argument we think inadmissible, for reasons too obvious to require a full statement of them. The company have done what the act legalises only on a condition which they have not performed. They stand convicted of the nuisance, and shew no justification. The verdict will, therefore, not be disturbed; but we still hope that the parties may consent to an arrangement useful to the public.

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Aldred v. *The North Midland Railway Company*, (1 *Railway Cases*, 404).]—The trustees of a turnpike road agreed to assent to a bill in Parliament for the formation of a railway, on the condition that the railway should pass over the road at a sufficient elevation, and that the road should not be lowered or otherwise prejudiced. This qualified assent was given in both houses of Parliament, and the bill passed. The 12th section of the act, among other powers, authorised the company to raise and sink rivers or streams, roads or ways, in order the more conveniently to carry the same over or under or by the side of the railway, provided that the company should not divert, obstruct, or impound any river or water to the prejudice of any mill or manufactory. Sect. 72 enacted, that the arch of any bridge, for carrying the railway over or across any turnpike road, should be of a height, from the surface of such road to the centre of such arch, of not less than sixteen feet, provided that the descent under any such bridge should not exceed one foot in thirty feet. The act contained no particular proviso as to the road in question.

Any special stipulations as to the mode of constructing works should be embodied in the railway act, or be made the subject of an agreement between the parties.

It was decided, by the *Vice-Chancellor of England*, that the modified assent of the road trustees—the terms of which were neither embodied in any agreement between the trustees and the company, nor adopted by the Legislature—afforded no equitable ground for restraining the company from enforcing, with regard to the road in question, all the powers conferred by the act; and that the company were authorised to sink the original surface of a turnpike road, in order to give the specified elevation to the arch of a bridge erected for carrying the railway over such road, notwithstanding that the effect, from the peculiar situation of the road, would be to render it liable to be occasionally flooded.

Edwards v. *The Grand Junction Railway Company*, (7 *Sim.* 342; 1 *Railway Cases*, 173).]—The directors of a company, for the incorporation of which a bill was pending in Parliament, had projected a railway to cross a certain turnpike road. The trustees of the road had taken measures for opposing the bill, unless certain clauses restricting, with regard to such road, the general powers proposed to be granted in the bill were introduced therein. The company, by their agent or manager, entered into an agreement with the trustees, to the effect, that, instead of such clauses being inserted in the act, the substance of them should be embodied in an agreement between the

An agreement to construct a road in a specified manner is binding on a railway company.

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company and the trustees. One of the terms of such agreement was, that the trustees should not oppose the bill; and they accordingly made no opposition to it. The act passed without the restrictive clauses originally contemplated by the trustees. It was decided by the *Vice-Chancellor of England*, and also by the *Lord Chancellor*, affirming his Honor's decision, that the incorporated company could not, as against the trustees, exercise a power conferred by the act in violation of the terms of the agreement.

If surveyors of highways object to a road which has been substituted for a former road, they are not authorised to obstruct it, but they must enforce the usual legal remedies.

The London and Brighton Railway Company v. *Blake*, (2 *Railway Cases*, 322).]—The London and Brighton Railway Act, (s. 59), after reciting that it is intended to carry the railway across certain public roads or highways in the parish of C., and to alter the levels or present surface of such roads, enacts, that all alterations, whether temporary or permanent, of, in, or to any of the said public roads or highways, and all works connected therewith, of any kind or description whatsoever, and all bridges to be erected by the company, and all future repairs of such altered roads, or of any temporary roads, and the quality of the materials to be used and applied in or to such altered or temporary roads, and all future damage to such altered or temporary roads, shall be made, formed, completed, and finished under the superintendence, from time to time, and to the entire satisfaction of the board of surveyors of roads for the parish of C. By sect. 60, if the company shall, in the doing, making, forming, completing, and finishing of all or any or either of such alterations or works in, to, or belonging to the said public roads or highways in the parish of C., do or cause any injury or damage to any or either of the said road or roads, or to any part thereof, and shall not forthwith proceed to repair and make good such injury or damage to the satisfaction of the board of surveyors of the parish of C., or if the roads so to be altered shall not be properly made and completed and kept in repair, it shall be lawful for the said board of surveyors to cause such repairs to be done." The company made a diverted temporary road leading from one of the said roads, which diverted temporary road was crossed by the railway. The railway did not cross the old road, neither did the company alter the level or surface of the old road. The company also made and tendered to the surveyors a permanent diverted road, which the surveyors refused to approve of or accept. The company having, in the execution of their works, crossed the temporary diverted road with locomotive engines, the

surveyors put up fences on either side, so as to obstruct the passage across it:—Held, by the *Vice-Chancellor of England*, that, even if the surveyors had, under the 59th and 60th sections, a jurisdiction to determine in what manner the diverted permanent road should be made, they were not justified in putting up the fences across the temporary road, but ought to have applied to a court of equity for an injunction, or to a court of law for a mandamus; and that the right of the surveyors was a private right, the surveyors being in no way interested in the question of public safety.

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Whether, upon the true construction of the act, such diverted temporary road was an alteration of a road within the meaning of the 59th and 60th sections—*quære*. This case was afterwards compromised.

IX. *Cases relating to the Repairs of Works.*

Rex v. *The Inhabitants of Kent*, (13 *East*, 220).]—The Medway Navigation Company, being empowered under a local act (16 & 17 Car. 2) to make the river navigable, and to take tolls, and "to amend or alter such bridges or highways as might hinder the passage or navigation, leaving them or others as convenient in their room," &c., and they having forty years ago destroyed a ford across the river in the common highway, by deepening its bed, and built a bridge over the same place, it was decided by the Court of King's Bench that the company were bound to keep such bridge in repair.

A company, under the powers contained in a statute, destroyed a ford, and substituted a bridge:—*Held*, that they were liable to keep the bridge in repair.

Lord *Ellenborough*, C. J., said, "Here the statute gives power to the company to take or alter the old highway for their own purposes, upon condition of leaving another passage as convenient in its room; and if they do not perform the condition, they are not entitled to do the act. It is a continuing condition; and when the company thought proper for their own benefit to alter the highway in the bed of the river, so that the public could no longer have the same benefit of the ford, they were bound to give another passage over the bridge, and to keep it for the public."—*Le Blanc* and *Bayley*, Js., concurred.

Rex v. *The Inhabitants of the Parts of Lindsey*, (14 *East*, 317).]—A canal company, authorised by an act of Parliament to make the

Same point as *R.* v. *The Inhabitants of Kent*, supra.

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river Bain navigable, and to make and enlarge certain navigable cuts, and build bridges and other works connected with the navigation, having for their own benefit made a navigable cut and deepened a ford which crossed the highway, and thereby rendered a bridge necessary for the passage of the public, which was accordingly built at the expense of the company in the first instance, are bound to maintain the same; and the burthen of repair cannot be thrown upon the inhabitants of the (county) parts of Lindsey, in the county of Lincoln.—Per *Le Blanc*, J., "The circumstances of this case are very nearly the same as occurred in the late case of the indictment against the inhabitants of Kent, (ante, p. 385), and must be governed by the same principle. The authority given to the company to make the cut, which rendered the highway impassable without a bridge, must create an obligation in them to erect the bridge, though the word 'authorise' in the act might not of itself create the obligation."—Lord *Ellenborough*, C. J., *Grose* and *Bayley*, Js., concurred.

Where a bridge was erected by a company over a navigable river—Held, that the company and not the county were liable to repair the bridge.

Rex v. *Kerrison*, (3 *M. & Sel.* 526).]—Where certain persons and their successors were authorised by act of Parliament to make a river navigable, and to cut the soil of any persons for making any new channel, &c.; by virtue of which they cut through a highway, and rendered it impassable, and a bridge was built over the cut, over which the public passed, and which had been repaired by the proprietors of the navigation, it was decided by the Court of King's Bench that the proprietors, and not the county, were liable to repair the bridge.—Lord *Ellenborough*, C. J., said, "The undertakers of this navigation have a duty, as it seems to me, arising out of the execution of their own powers under the act. The act enables them to cut new channels as occasion should require; and, if occasion requires them to cut through a public highway, their duty is to furnish a substitute to the public by means of a bridge. Can we put any other construction upon the act but this—that the Legislature intended that, so far as regarded the making the river navigable, and the cutting new channels for that purpose, neither public nor private rights should stand in their way? But still they should make good to the public in another shape the means of passage over such ways as they were empowered to cut through. What has been done is not a mere incommoding the passage, leaving the public a partial enjoyment of the highway, but it is a total deprivation of the means

of using it. I am not aware that what we now decide will at all clash with what we decided in the last case of *Rex* v. *Inhabitants of Kent.*" (Ante, p. 385).—*Le Blanc* and *Bayley*, Js., concurred.

As to the liability of a dock company to make a sewer to remove a nuisance occasioned by their works.

Rex v. *The Bristol Dock Company*, (6 *B.* & *C.* 181).]—By an act of Parliament, empowering certain persons to make a floating harbour at Bristol, it was enacted, "that it should and might be lawful for the directors of the Bristol Dock Company, and they were thereby authorised and required to make a common sewer in a certain direction therein specified, and also to alter and reconstruct all or any of the sewers of the said city at the mouths thereof, so and in such manner that the sewers might be discharged considerably under the surface of the water in the floating harbour, and also to make such other alterations and amendments in the sewers of the said city as might or should be necessary in consequence of the floating of the said harbour." The directors altered several of the sewers, so as to discharge them considerably under the surface of the water in the floating harbour; but the sewage there discharged was so offensive as to be a nuisance to the neighbourhood. It was decided by the Court of King's Bench, that, under the latter part of the clause above set forth, the directors were authorised and required to make a new sewer, if necessary to remove the nuisance.

As to the liability of a canal company to cleanse drains.

Priestley v. *Foulds*, (2 *Man.* & *Gr.* 175).]—An incorporated company was authorised by act of Parliament to make a navigable canal, the construction of which would interfere with an ancient drain. By one section of the statute the company was required to make a drain on each side of the canal, and parallel therewith, in lieu of part of the ancient drain, which would be destroyed. By another section, the company was required to make such arches, tunnels, culverts, drains, or other passages over, under, by the side of, or into the canal, and the trenches, streams, and watercourses communicating therewith, and towing-paths on the sides thereof, of such depth, breadth, and dimensions as should be sufficient to convey the water clear from the lands adjoining or lying near the canal, without obstructing or impounding the same; and to support, maintain, cleanse, and keep in repair all such arches, &c., drains, and other passages. It was decided, by the Court of Common Pleas, that the drains made in pursuance of the former section, in lieu of the ancient drain,

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were to be cleansed by the company, as well as those made in pursuance of the latter section; and that a summary remedy given by the latter section, in case of non-repair by the company, was applicable to a default in cleansing the drains made in lieu of the ancient drains.—*Tindal*, C. J., "In *Rex* v. *Kent* (ante, p. 385), it was held, that a clause directing the erection of a bridge imposed a continuing obligation. That case appears to me to furnish a key to unlock the meaning of this act of Parliament. There the power of building of a bridge in lieu of a ford, which the Medway Navigation Company were authorised to destroy,—here, the power of substituting new drains for the old Fleet drain,—were conferred by the Legislature for the particular benefit of the respective companies. This case, therefore, falls within the well-known maxim '*qui sentit commodum sentire debet et onus.*' I am of opinion that judgment must be entered for the defendant."—*Bosanquet*, *Coltman*, and *Maule*, Js., concurred.

As to the liability of a navigation company to repair the banks of a channel.

Regina v. *The Bristol Dock Company*, (2 *Q. B.* 64; 2 *Railway Cases*, 599).]—By a dock act, certain persons were formed into a company for improving a port, and made proprietors of the works, and were authorised and required to make, complete, and maintain a new course or channel for a river, the same to be of equal depth and breadth at the bottom, and with equal inclination of the sides, as the then present river course then had in those parts thereof which had not been excavated or embanked, or as near as circumstances would admit, except in such parts of the new course as should be cut through rock or stone. A mandamus issued to the company, stating, in the inducement, that the company had made and completed a new channel, but that certain parts of the south bank or side, not cut through rock or stone, had since become and were broken down and out of repair, and the inclination of the said side was thereby greatly altered, to the danger of the obstruction of the navigation, and damage of all the liege subjects, &c.; and the company were commanded to repair and maintain the said parts of the south bank. Return, that the company were not required by the statute, nor otherwise liable, to repair and maintain the said parts; and that, as near as circumstances had admitted or did admit, they had maintained the new course of equal depth and breadth at the bottom, and with equal inclination of the sides as the river course at the time of the act passing had in those parts which had not been excavated or embanked, and except such

parts of the new course as had been cut through rock or stone. It was decided, by the Court of Queen's Bench, that the first part of the return was bad, as traversing matter of law, and also because a legal liability appeared; that the second part was also bad, as not answering the mandatory part of the writ, but applying only to matter stated in the writ as a consequence of the omission to repair.

X. *Other Cases not included in the foregoing Subjects.*

Whether a nuisance may be excused on the ground that public benefits have been attained by the works which caused the nuisance—*quære.*

Rex v. *Russell*, (6 *B.* & *C.* 566).]—Upon the trial of an indictment for a nuisance in a navigable river, by erecting staiths there for loading ships with coals, the jury were directed by the learned Judge to acquit the defendant if they thought that the abridgment of the right of passage occasioned by these erections was for a public purpose, and produced a public benefit, and if the erections were in a reasonable situation, and a reasonable space was left for the passage of vessels on the river; and he pointed out to the jury that by means of the staiths, coals were supplied at a cheaper rate, and in better condition, than they otherwise could be; which was a public benefit:—Held, by *Bayley* and *Holroyd*, Js., that this direction to the jury was proper. Lord *Tenterden*, C. J., diss.

If a statute authorises the use of locomotive engines on a railway running parallel with an ancient highway, an indictment for a nuisance will not lie, although the horses of persons travelling on the highway are frightened by the engines.

Rex v. *Pease*, (4 *B.* & *Adol.* 30; 1 *Nev.* & *M.* 690).]—By an act reciting that a railway between certain points would be of great public utility, and would materially assist the agricultural interest and the general traffic of the country, power was given to a company to make such railway according to a plan deposited with the clerk of the peace, from which they were not to deviate more than 100 yards. By a subsequent act, the company, or persons authorised by them, were empowered to use locomotive engines upon the railway. The railway was made parallel and adjacent to an ancient highway, and in some places came within five yards of it. It did not appear whether or not the line could have been made, in those instances, to pass at a greater distance. The locomotive engines on the railway frightened the horses of persons using the highway as a carriage road. On indictment against the company for a nuisance, it was decided that this interference with the rights of the public must be taken to have

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been contemplated and sanctioned by the Legislature. The judgment of the Court of King's Bench was delivered by *Parke*, J.—"The question is, whether the statute gives an authority to the company to use locomotive engines on the railway absolutely, or only with some implied condition or qualification, that they should employ all practicable means to protect the public against any injury from them; and those means were, on the argument, suggested to be, the altering the course of the railroad, or the erection of fences or screens of sufficient height to exclude the view of the engines from the passengers on the common highway. Now the words of the clause in question clearly give to the company the unqualified authority to use the engines; and we are to construe provisions in acts of Parliament according to the ordinary sense of the words, unless such construction would lead to some unreasonable result, or be inconsistent with, or contrary to, the declared or implied intention of the framer of the law, in which case the grammatical sense of the words may be extended or modified; instances of which are to be found in the case of *Ryston* v. *Studd*, (Plowd. 463; and Bacon's Abr., tit. Statute, letter I). Let us, then, consider whether there is anything unreasonable, or contrary to the express or implied intention of the Legislature, in construing these words in their ordinary sense, and without any such condition or qualification as before mentioned. It is clear that the makers of this and the prior act had in view the construction of a railroad (with its branches) in a certain defined line, which had been delineated on a map deposited with the clerk of the peace, and from which line the road was not to deviate more than 100 yards, and not into the grounds of persons not mentioned in the book of reference. The Legislature, therefore, must be presumed to have known that the railroad would be adjacent for a mile to the public highway, and consequently that travellers upon the highway would be in all probability incommoded by the passage of locomotive engines along the railroad. That being presumed, there is nothing unreasonable or inconsistent in supposing that the Legislature intended that the part of the public which should use the highway should sustain some inconvenience for the sake of the greater good to be obtained by other parts of the public in the more speedy travelling and conveyance of merchandise along the new railroad. Can any one say that the public interests are unjustly dealt with, when the injury to one line of communication is compensated by the increased

benefit of another? So far is such a proceeding from being unreasonable, that it was held, by the majority of the judges, in *Rex* v. *Russell*, (6 B. & C. 566, ante, 389), that a nuisance was excusable on that principle at common law; and whether that be the law or not, at least it is clear that an express provision of the Legislature, having that effect, cannot be unreasonable. It is true that the same object, that of giving one part of the public the benefit of the use of these engines, might have been effected without the same injury to the other part using the road, if the act had imposed on the company the obligation of erecting a sufficient fence or screen at their own cost, or had provided that the line of road should be different at that place; but it is by no means necessary to imply such an obligation in order to make the clause reasonable and consistent, for it has been shewn to be so without it; and it is natural to suppose that if such a condition had been intended, it would have been particularly expressed. For these reasons, we think that the defendants were justified, under the above-mentioned section, and, therefore, that the judgment of the Court should be in their favour." Judgment for the defendants.

Construction of a special act which authorised the making of a railway on a turnpike road.

Rex v. *Morris, Bart.*, (1 *B.* & *Ad.* 441).]—Defendant, being proprietor of a colliery, made a railroad from it to a sea-port town. The railroad was 400 yards long, and was laid upon a turnpike road, which was narrowed so far, that in some places there was not a clear space for two carriages to pass. Defendant allowed the public to use his railroad, paying a toll. It was decided, that the facility given to the general traffic with the sea-port, and particularly to the conveyance of coals, &c. thither, was not such a convenience as justified the obstruction of the highway.

By an act, authority was given to all persons to lay wagon-ways along or across any of the roads mentioned in the act, (of which the turnpike road in question was one), but the parties so doing were to keep such roads in repair for twenty yards on each side of the wagon-way so laid down. It was decided, that the act did not authorise the laying of such wagon-way where there were not twenty yards of road on each side.

By a statute, a company was incorporated and empowered to make a railway through certain districts. By sect. 5, they were directed to form new roads in lieu of any existing ones that might be injured by their railway. Sect. 70 empowered proprietors of lands, mines,

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&c. to make railways through their own lands and those of other persons consenting, and across and along any road or roads to communicate with the principal railway; and no reference was made to any former limitation of powers. On these facts it was decided, that the power in this clause was not absolutely given, but must be subject to the provision of sect. 5, or to the condition of leaving space enough, independent of the railways, for the public to pass.

Construction of a special act as to the powers of the company to lay down runs on a road adjoining to the railway for the transit of goods to a wharf.

The London and Brighton Railway Company v. *Cooper*, (2 *Railway Cases*, 312).]—The preamble of the London and Brighton Act, after reciting that the establishment of a railway communication between London and Brighton will be of great public advantage, enacts, (sect. 3), that it shall be lawful for the company to make and maintain a main line of railway and branches, with all proper warehouses, wharfs, and all other suitable and proper works, communications, approaches, and conveniences attached to or connected with the same. By the 12th section, the usual powers are conferred on the company for making and maintaining the railway, and (among others) to make or construct, upon, across, or over any roads, &c., such roads, ways, cuttings, &c. as the company shall think proper. The company, having purchased a private wharf, separated from one of their terminus stations by a turnpike road, laid down on the road stone blocks, so as to form two runs or stone-ways level with the road, for the purpose of facilitating the passage of goods from the wharf across the road to the station. It was decided, that the company were not authorised by their act to interfere with the road in such a manner; and an injunction, which had been granted to restrain the trustees of the road from removing the stone blocks, was dissolved, although, in the opinion of the Court, no damage could result from the stone blocks, either to the road or the passengers upon it.

Lord *Cottenham*, C., said, "The question which I have to consider is, whether I can find in this act any reasonable doubt that what the company have done is supported by their act; and after paying great attention to the clauses to which I have been referred, I cannot find any one which gives them even a colour of title. The 12th section, no doubt, is as large as possible in describing what the company may do; but there are those words at the commencement which limit the whole operation: it must be for the purposes and subject to the pro-

visions and restrictions of the act. Not only, therefore, must you find words in the enacting clause sufficient to justify what is done, but you must find that what is intended to be done under that power is for the purposes, and subject to the provisions and restrictions of the act. [Here his Lordship described the works complained of.] However, this is not for the purposes of the railway itself, and is therefore not a work within the meaning of the section. The purposes of the act were to make a railway or a branch communication; but I cannot understand what clause in the act authorises the company, in order to make a convenient road from the railway to some other spot, to deal with the road at all. There are provisions enabling the company to deal with the turnpike road if it is for the purposes of the railway; but if they wish to make another road, they cannot take the turnpike-road for that purpose. Nothing in the act authorises them to deal with the turnpike road in any way, except for the purposes and under the provisions and restrictions of the act. What the company have done to this road is not for the purposes of the act, or within its provisions. If it is a common road of communication, made for the purposes of easy access to the railway, then I do not find anything in the act authorising the company to deal with the road at all."

As to the construction of a proviso in an act, which prevented any interference with the works of certain drainage commissioners.

Smith v. *Bell*, (10 *M.* & *W.* 378; 2 *Railway Cases*, 877).]—By an act, trustees were appointed for the purpose of the more effectual drainage, by means of a steam-engine, of a fen district, called the Bourn North Fen and the Dyke Fen; and by the 62nd section it was enacted, that every engine, machine, building, and work to be erected and made by the trustees under the powers of the act, and all engines, machinery, buildings, &c., sewers, drains, watercourses, &c., and other works already made, or then existing, or provided for the drainage of the Bourn North Fen and Dyke Fen, and which should be thereafter made and provided for such purpose, and the right to and property in them, should be and they were thereby vested in the trustees, with a proviso that nothing in the act contained should extend to or affect any engines, machinery, &c., sewers, drains, watercourses, &c., and other works already made, or then existing, or provided for the drainage of the said fens, and then vested in and under the control of certain commissioners, appointed under a former inclosure and drainage act, called the Black Sluice Commissioners;

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and sect. 64 enacted, that it should be lawful for the trustees, upon any land in Bourn North Fen and Dyke Fen not vested in the Black Sluice Commissioners, to make and erect a steam-engine, with all proper machinery, with proper and convenient buildings, sluices, pits, and other necessary works; and to make and from time to time maintain, repair, and improve, as occasion might require, the sluices, bridges, cuts, sewers, and other works already or thereafter to be made in, upon, and through the said fens, for effectually draining the same, out of the funds to be raised under the authority of the act, and making compensation for damage.

It was decided by the Court of Exchequer that the trustees had no power under this act to widen a drain under the control of the Black Sluice Commissioners from the width of eighteen to forty feet, for the purposes of a reservoir, to bring a sufficient supply of water to their steam-engine, thereby cutting away upwards of three acres of the land vested in the commissioners, although such widening was itself an improvement of the drainage; and that they had no power to make any reservoir on the land vested in the commissioners, although the making of a reservoir was necessary to the proper working of the engine for the purposes of the drainage, and none could be made without cutting into some of the banks or drains vested in the commissioners.

Construction of railway act as to powers to take lands required to make the railway.

Questions of practical science in dispute may be referred to an engineer, and the Court will afterwards adopt his report. See *Manser* v. *The Northern and Eastern Counties Railway Co.*, 2 Railway Cases, 380; ante, 369.

Webb v. *The Manchester and Leeds Railway Company*, (4 *My.* & *Cr.* 116; 1 *Railway Cases*, 576).]—The Manchester and Leeds Railway Act (sect. 94) empowers the company to enter into and upon the lands of any person or corporation whatsoever, according to the provisions and restrictions of the act, and, in or upon such lands, or in or upon lands adjoining thereto, to bore, dig, cut, embank, and remove and use any earth, stone, gravel, or sand, or any materials or things which may be dug or obtained therein, or otherwise in the execution of the powers of the act, and which may be proper or necessary for making, maintaining, repairing, or using the railway and other works by the act authorised, or which may obstruct the making, maintaining, or using the same; and it empowers the company, according to the provisions and restrictions of the act, to make or construct inclined or other planes, tunnels, embankments, bridges, &c. Sect. 96 enacts, that the lands to be taken for the line of the railway shall not exceed twenty-two yards in breadth, except where

a greater width may be required for either embankments or cuttings.

Semble, that the company have not, under these clauses, power by compulsory process to purchase land for the purpose of making an embankment upon other and lower land on a different part of the line.

A point involving questions of practical science being in dispute, and the affidavits being conflicting, the evidence was, at the suggestion of the Court, and with the consent of both parties, referred to an engineer for his report on the question in dispute, and the conclusion of the engineer with respect to the facts was adopted by, and made the ground of the order of, the court.

A railway company will not be prevented by injunction from taking lands for purposes warranted by their act, on the ground that, previously to the filing of the bill, and before the necessity of taking it for such purposes was made known to the plaintiff, the company had endeavoured to take the same lands for other purposes not so warranted.

Ambiguous words in an act of Parliament, authorising a public company to take land by compulsory process, are to be construed against the company and in favour of private property. (See ante, 166, n. (*e*)).

When a railway company are liable to pay tolls for crossing a turnpike road.

Rowe v. *Shilson*, (4 *B. & Adol.* 726).]—An embankment company was, by an act of Parliament, (not limited in duration), empowered to make a road, and to erect turnpikes upon or across "any lanes or ways leading or that might thereafter lead out of the same," and to take tolls at such turnpikes. By subsequent acts, another company was empowered to make a railway, and it was enacted, that all persons should have free liberty to use the same, with carriages properly constructed, upon payment only of such rates and tolls as should be demanded by the railway company, not exceeding the sums mentioned in that act. The railway was afterwards made, and it crossed the embankment company's road. It was decided, that the railway, though made and opened to the public by act of Parliament, was a "way" within the meaning of the first-mentioned act. Secondly, that the clause in favour of the public in the railway act did not take away the vested right of the embankment company to their tolls; and, consequently, that they might take toll of persons crossing their road upon the railway.

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A temporary bridge across a turnpike road held to be within the provisions of a section in a railway act; but an injunction was refused, and, in lieu thereof, the company were put under certain terms.

The Attorney-General v. *The Eastern Counties Railway Company*, (3 *Railway Cases*, 337).]—By sect. 100 of a Railway Act, it was enacted, "That where any bridge shall be erected by the said company, for the purpose of carrying the said railway over or across any turnpike road, the span of the arch of such bridge shall be formed, and shall at all times be and be continued, of such width as to leave a clear and open space under every arch of not less than twenty-five feet, and of a height from the surface of such turnpike road to the centre of such arch of not less than sixteen feet, and the descent under any such bridge shall not exceed one foot in thirty feet," &c.

It appeared that the company erected a temporary bridge across a turnpike road, by the side of a permanent bridge, for the purpose of carrying spare earth over the road, whereby the road was narrowed to less than twenty-five feet under the bridge; and an injunction was thereupon applied for to prevent the company from using the bridge.

Sir *Knight Bruce*, V. C.—I am of opinion, that, although the bridge is a temporary one, and adjoining the regularly made bridge, yet the 100th section has not been complied with, and, on that ground at least, what has been done is illegal; and, taking the whole act together, I think there has been an infraction of the law, and that, too, without any favourable circumstances. No case of great practical inconvenience has been made out, and I do not think it necessary, considering all the matters before me, nor do I think it necessarily the duty of the Court, to interfere by injunction. The Court will exercise its discretion according to circumstances, and, although there may have been an infraction of the law, it will endeavour to do substantial justice to one party without imposing unnecessary hardship on the other, especially in a case where the legal tribunals are open. [His Honor suspended the injunction, and put the company under certain terms.]

Where money was paid on the withdrawal of the opposition of a landowner to a railway bill pending in Parliament,—*Held*, upon the construction of the agreement entered into between the parties, that the railway company were bound to make proper watering-places for cattle in certain fields intersected by the railway.

Regina v. *The York and North Midland Railway Company*, (14 *Law Journ.* 277, *Q. B.*)]—Under a special Railway Act, the company were required, by sect. 88, "to make proper watering-places for cattle, in all cases where, by means of the railway, the cattle of any persons occupying lands adjacent thereto should be deprived of access to their ancient watering-places, and to supply the same with water." After this act passed, and during the progress through Parliament of a subsequent act for amending the first act, by an indenture made between the railway company and Sir W. M. Milner, in consideration,

amongst other things, of Sir W. M.'s withdrawing all opposition to the latter bill, the company covenanted "that they would pay to Sir W. M., as and for the special damage to be thereby occasioned to his estate, and particularly to his mansion house, the sum of 5000*l.*; and that, whenever any close, &c. of Sir W. M. should be intersected by the said railway, the different parts adjoining should be thrown together and properly levelled, &c.; and that the company should, at their own expense, make and complete such good and sufficient fences, drains, gates, stiles, and other conveniences as might be necessary for the re-dividing of the fields which might be intersected by the railway, and for laying them to the adjoining fields of the same estates for the purpose of convenient occupation; or, otherwise, would pay the said Sir W. M. the costs incurred by him in so doing." The 5000*l.* was paid by the company, and, under the indenture, Sir W. M. had given notice to the company to make certain fences, drains, crossings, gates, and also ponds in portions of the lands which had been intersected and cut off from the ancient watering-places by reason of the making of the railway. On the refusal of the company to make such ponds or watering-places, a mandamus was applied for.

Lord *Denman*, C. J., delivered the judgment of the Court as follows (after stating the contents of the return, which set out the indenture).—The defendants say they executed the works required, except the ponds, and they conclude by alleging that the cutting off of ponds and watering-places, as stated in the writ, and damages occasioned thereby, were part of the special damages covered by the 5000*l.*; and, further, that the ponds they are required to make were not conveniences within the meaning of the indenture last set forth. Sir W. M. has traversed both these assertions, to which the defendants have demurred. We do not enter into the technical objection raised, as we are of opinion the indenture furnishes no sufficient answer to the writ. The special damages, for which the 5000*l.* were paid, are evidently such as were peculiar to Sir W. M. in the alteration of the line, of whatever nature they may be, and not such damages as might happen to any person whose lands were intersected; such damages are, in the very clause of the indenture, pointed out as ordinary damages, and the 88th section of the act provides for them in terms. The indenture was made on the 1st of May, 1837, long after the act, which passed on the 21st of June, 1836, and the clause in the inden-

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this description is not to be considered as a servant, but as a person carrying on an independent business, such as the commissioners were fully justified in employing to perform works which they could not execute for themselves, and who was known to all the world as performing them. We find here none of the reasons which have prevailed in cases where one person has been held liable for the acts of another as his servant. The learned judges who thought the defendant liable in *Laugher* v. *Pointer* (5 B. & C. 547) might, without inconsistency, have held that these commissioners are not liable. The doubt is raised by the contract, which expressly requires that all such parts of the said works to be done by Button as are not in a particular manner specified and described in the contract, or the plans and specifications, shall be executed in such manner as the surveyor of the said works for the time being shall direct, and in a good and workmanlike manner; and such execution of the work is secured by penalties. This passage of the agreement would appear to take power from the contractor, and keep it in the hands of the commissioners, or their surveyor; but, whatever may be its proper construction or effect, it has no application to the present case, for the bank which failed is a part of the works so specified and described, and for which, therefore, if ill done, the contractor is liable, and the commissioners are not. We are therefore of opinion, that the rule for a nonsuit must be absolute."

Rule absolute.

§ 7.—Obligations and restrictions imposed by the statute law on railway companies.

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To convey her Majesty's mails.

I. The obligations imposed on railway companies to convey the mails, are contained in the stats. 1 & 2 Vict. c. 98 (*a*), and 7 & 8 Vict. c. 85, s. 11 (*b*); and a clause is now always inserted in each special railway act, making the company liable to the provisions of these general acts.

The above-mentioned general acts are applicable to railways, whether the carriages used are impelled by steam, locomotive or stationary engines, or animal or other power (*c*); and no company can make bye-laws repugnant to these acts (*d*).

(*a*) Post, App., 4.

(*b*) Post, App., 31.

(*c*) 1 & 2 Vict. c. 98, s. 1, post, App., 4.

(*d*) Id., s. 11, post, App., 8. In a document published at the close of the last session of Parliament, (1846), and intituled "The Second Report of the Select Committee on Railway Acts Enactments," but which appears to have been prepared as a draft only, by Mr. Morrison, one of the members of the Select Committee, the following remarks are made on the subject of the carriage of the Post-Office Mails: —"Part of the evidence taken by your Committee has reference to consequences, with which the esta-

To convey her Majesty's Mails.

The Postmaster-General is authorised, by notice delivered to any railway company (*e*), to require that the mails, from the day to be named in the notice, (being not less than twenty-eight days from the delivery thereof), shall be forwarded on the railway, either by the ordinary or special trains, at such hours or times in the day or night

blishment of railways has been attended, to a branch of the public revenue intimately connected with the convenience and welfare of the great body of the people. Before the establishment of railways, the Post-Office, according to Mr. Stow, paid for the carriage of the mails, including the coaches, something under 2*d.* a mile; but the charges demanded by the railways are much higher; and in the case of one railway, the North Union, they amount to no less than 2*s.* 9$\frac{1}{2}$$\frac{1}{2}$*d.* per mile. The aggregate charge for carrying the mails in Great Britain was, in 1836-7, before railways were adopted, 53,293*l.* 18*s.* 4*d.* or 1$\frac{1}{2}$$\frac{1}{2}$ per mile per day, for 18,090 miles; but, partly in consequence of the increase of letters and parcels through the introduction of the penny post, and partly in consequence of the high sums charged by some railways, the aggregate charge is now much higher. In 1846, as appears by a return from the Post Office, the number of miles travelled daily by mail-coaches had been reduced to 11,473, while the amount paid per annum was 45,729*l.* 10*s.* 6*d.*, or 2$\frac{1}{2}$$\frac{1}{2}$*d.* per mile per day. But, besides this sum, there is paid yearly to railways no less than 102,185*l.* 6*s.* 10*d.*; the two amounting together to 147,914*l.* 17*s.* 4*d.* Mr. Robert Stephenson, who has been extensively employed in arbitrating between the Post-Office and railway companies, states that the principal difference between Captain Harness, on the part of the Post-Office, and himself was this, that Captain Harness contended, that, if a line run six trains a day, and a seventh were wished by the Post-Office, it should only pay the bare cost of that seventh train; but that he said, 'No; we ought to negotiate with the Post-Office as with other parties: there is no law that exempts them from the ordinary mode of transacting business;' therefore, he had invariably maintained, that the total establishment of the railway ought to be taken, and a portion of the charges placed to the account of that one train; observing, significantly, that if the legislature had made a law that they should be treated differently, well and good; but that he took the law as it stands. Mr. Reed states, that in France they are obliged by every train to reserve a compartment of a carriage, convenient for a person to ride in, for the Post-Office guard, with his bag of letters, without any remuneration; and a similar system seems to prevail on all continental railways."

(*e*) Notices may be delivered to any director, secretary, or clerk, or be left at any station on the railway. 1 & 2 Vict. c. 98, s. 15, post, App., 9.

To convey her Majesty's Mails.

as the Postmaster-General shall direct, together with the guards in charge thereof, and any other officer of the Post-Office; and thereupon the company are required, at their own cost, to provide sufficient carriages (*f*) and engines on the railway for the conveyance of the mails to the satisfaction of the Postmaster-General, and to receive, take up, carry, and convey, by such ordinary or special trains or otherwise, as need may be, all mails or post letter-bags, as shall for that purpose be tendered to them by any officer of the Post-Office; and also to receive, take up, carry, and convey in the carriages carrying such mails, &c., the guards in charge thereof, and any other officers of the Post-Office; and to receive, take up, deliver, and leave such mails, &c., guards and officers, at such places in the line of the railway, on such days, at such hours and times in the day or night, and subject to all such reasonable regulations and restrictions as to speed of travelling, places, times, and direction of stoppages and times of arrival, as the Postmaster-General shall, from time to time, order and direct. And it is provided, that the rate of speed to be required shall in no case exceed the maximum rate of speed prescribed by the directors for the conveyance of passengers by their first-class trains; but that no alteration in the rate of speed of any train by which the mails are conveyed shall be made until six months' previous notice be given to the Postmaster-General of any such intended alteration (*g*). The subsequent statute, 7 & 8 Vict., amended the law with respect to certain railways (*h*) as to the rate of speed, and empowers

(*f*) These carriages are required to be adorned with the royal arms on the outside, in lieu of the ordinary requisition of name of owner, &c. 1 & 2 Vict. c. 98, s. 10, post, App., 8.

(*g*) 1 & 2 Vict. c. 98, s. 1, post, App., 4.

(*h*) 7 & 8 Vict. c. 85, s. 6, post, App., 30, points out the railways to which this regulation applies, *i. e.* "passenger railways, incorporated or obtaining an extension of powers by any act of the then session or any subsequent session of Parliament"

To convey her Majesty's Mails.

the Postmaster-General to require the mails to be forwarded by such railways at any rate of speed which the inspector-general of railways should certify to be safe, not exceeding twenty-seven miles in the hour, including stoppages (*i*).

The Postmaster-General may also require that the whole of the inside of any carriage shall be exclusively appointed for the purpose of carrying the mail (*k*), and that separate carriages be provided for the purpose of sorting letters (*l*); also, that mail coaches or carts shall be conveyed on the trucks or frames used on the railway (*m*), or that a mail-guard shall be conveyed with bags, by any trains other than a mail train, upon the same conditions as any other passengers (*n*). And the officers, servants, and agents of a railway company engaged in carrying the mails are required to obey, observe, and perform all such reasonable regulations respecting the conveyance, delivering, and leaving of mails and post letter-bags, guards and officers of the Post-Office, mail coaches, or carts and carriages on the railway, or on the line thereof, as the Postmaster-General, or such officer of the Post-Office as he shall nominate, shall, in his discretion, from time to time give or make. But it is provided, that no such officer shall interfere with or give orders to the engineer having the charge of any engine used upon the railway, and that any cause of complaint shall be stated to the conductor, or other officer having charge of the train, or to the chief officer at any station: and it is also provided, that, in case of any default or neglect, on the

(*i*) 7 & 8 Vict. c. 85, s. 11, post, App., 31.

(*k*) 1 & 2 Vict. c. 98, s. 2, post, App., 5.

(*l*) Id., s. 3, post, App., 5.

(*m*) Id., s. 4, post, App., 6.

(*n*) 7 & 8 Vict. c. 85, s. 11, post, App., 31. But it is provided, that this shall not be construed to authorise the Postmaster-General to require the conversion of a regular mail into an ordinary train, or to exercise any control over the company in respect of any ordinary train; nor shall the company be responsible for the safe custody or delivery of any mail bags so sent.

part of any officers or servants of the company, to comply with any of the regulations of the Postmaster-General, or other appointed officer of the Post-Office, the company shall be wholly responsible for the same (*o*). If the company or their servants refuse or neglect to perform any of the before-mentioned duties, imposed upon them by the statute 1 & 2 Vict. c. 98, the company are liable to forfeit 20*l.* for every offence (*p*), irrespective of their liability under the bond, which the Postmaster-General may, if he shall think fit, require any railway company to enter into. The form of this bond, and the sum in which it is taken, is in the discretion of the Postmaster-General, and it must be renewed from time to time, whenever it becomes forfeited, or when the Postmaster-General shall require it to be renewed (*q*). The condition of the bond requires the company to perform all the acts, matters, and things which are, by the stat. 1 & 2 Vict. c. 98, required to be done or performed by the company, their officers, servants, and agents (*r*). With respect to railways, or parts of a railway, demised by the company of proprietors before the passing of the act 1 & 2 Vict. c. 98, the lessees, and their assigns, during the continuance of such lease, are liable to perform all the above-mentioned duties, in lieu of the company of proprietors, except that such lessees, (not being a body corporate or company), or their assigns, are not liable to give the before-mentioned bond for a sum exceeding 1000*l.*, and cannot in any one year be liable in damages to any amount exceeding 1000*l.* and costs of suit (*s*).

(*o*) 1 & 2 Vict. c. 98, s. 5, post, App., 6.

(*p*) Id., s. 12, post, App., 8.

(*q*) If this bond be not given or renewed for one month after it is required by the Postmaster-General, a penalty of 100*l.* per diem is incurred. 1 & 2 Vict. c. 98, s. 13, post, App., 9.

(*r*) 1 & 2 Vict. c. 98, s. 13, post, App., 9.

(*s*) Id., s. 14, post, App., 9.

To convey her Majesty's mails.

Remuneration to be paid for conveying the mails.

The remuneration to be received by railway companies for the performance of the foregoing services is ascertained in the following manner:—First, it is provided, that the railway company shall be entitled to receive such reasonable remuneration as shall (either prior to or after the commencement of the services) be fixed and agreed on between the Postmaster-General and the company (*t*); or, in case of difference, then such remuneration as shall be determined by two arbitrators, one to be named by each party; and if such arbitrators cannot agree, then the amount is to be ascertained by an umpire, appointed by the arbitrators previously to their entering upon the inquiry (*u*). The arbitrators are to be appointed by each party within fourteen days after notice from the other, or, in default of such appointment, the arbitrator of the party giving notice may name the other arbitrator; and the arbitrators are required to make their award within twenty-eight days after their appointment, or otherwise the matter shall be left to be determined by the umpire. If the umpire neglects or refuses to make his award for twenty-eight days, then another umpire must be appointed by the arbitrators, and so toties quoties (*x*). Although an agreement or award, as to the amount of remuneration, may have been made, the Postmaster-General may require, by notice in writing, any addition to be made to the services performed; and in such case, and also in case of a discontinuance of any part of the services, a fresh agreement must be entered into, or award made as before mentioned, to settle the future amount of remuneration to be paid for such increased or diminished services; and compensation may also be awarded for any loss occasioned by the discontinuance or alteration of the

(*t*) 1 & 2 Vict. c. 98, s. 6, post, App., 6.

(*u*) Id., s. 16, post, App., 10.

(*x*) Id., s. 18, post, App., 10.

To convey her Majesty's Mails.

services previously agreed to be performed (*y*). The services required by the Postmaster-General to be performed are not in any case to be suspended, postponed, or deferred by reason of the amount of remuneration not having been fixed upon, or by reason of an award not having been made (*z*).

After a contract or award settling the amount of remuneration has been in operation for three years, the railway company may require that the remuneration to be paid shall be again submitted to arbitration (*a*).

Lastly, the Postmaster-General is authorised to determine the performance of any services, by giving the company six months' notice in writing (*b*); or absolutely to put an end to any such services without giving any previous notice; but in the latter event it is provided, that, if the services are put an end to without any just cause, the company shall receive a full and fair compensation for all loss thereby occasioned (*c*). It is also declared, that the 1 & 2 Vict. c. 98, shall be construed according to the respective interpretations of the terms and expressions contained in the Post-Office Act, 1 Vict. c. 36, so far as those interpretations are not repugnant to, or inconsistent with, the context of such provisions (*d*); and that the act shall

(*y*) 1 & 2 Vict. c. 98, s. 7, post, App., 7.

(*z*) Id., ss. 6, 7, 17, post, App., 6, 10.

(*a*) Id., s. 16, post, App., 10.

(*b*) Id., s. 8, post, App., 7.

(*c*) Id., s. 9, post, App., 7.

(*d*) By 1 Vict. c. 36, s. 47, it is enacted, "that, for the interpretation of the Post-Office laws, the following terms and expressions (inter alia) shall have the several interpretations hereinafter respectively set forth, unless such interpretations are repugnant to the subject, or inconsistent with the context of the provisions in which they may be found; (that is to say), the term—

'*Mail*' shall include every conveyance by which post letters are carried, whether it be a coach, or cart, or horse, or any other conveyance, and also a person employed in conveying or delivering post letters, and also every vessel which is included in the term 'packet-boat.'

'*Mail-bag*' shall mean a mail of letters, or a box, or a parcel, or any

To convey her Majesty's Mails.

also be deemed to be a Post-Office act, and that the penalties therein mentioned may be recovered as penalties are reco-

other envelope in which post letters are conveyed, whether it does or does not contain post letters.

'*Officer of the Post-Office*' shall include the Postmaster-General, and every deputy postmaster, agent, officer, clerk, letter-carrier, guard, post-boy, rider, or any other person employed in any business of the Post-Office, whether employed by the Postmaster-General, or by any person under him, or on behalf of the Post-Office.

'*Persons employed by or under the Post-Office*' shall include every person employed in any business of the Post-Office, according to the interpretation given to 'Officer of the Post-Office.'

'*Post-town*' shall mean a town where a post-office is established, (not being a penny or twopenny or convention Post Office').

'*Post letter-bag*' shall include a mail-bag or box, or packet or parcel, or other envelope or covering in which post letters are conveyed, whether it does or does not contain post letters.

'*Post letter*' shall mean any letter or packet transmitted by the post under the authority of the Postmaster-General; and a letter shall be deemed a post letter from the time of its being delivered to a post-office to the time of its being delivered to the person to whom it is addressed; and the delivery to a letter-carrier, or other person authorised to receive letters for the post, shall be a delivery to the Post-Office; and a delivery at the house or office of the person to whom the letter is addressed, or to him, or to his servant or agent, or other person considered to be authorised to receive the letter according to the usual manner of delivering that person's letters, shall be a delivery to the person addressed.

'*Post-Office*' shall mean any house, building, room, or place where post letters are received or delivered, or in which they are sorted, made up, or despatched.

'*Postmaster-General*' shall mean any person or body of persons executing the office of postmaster-general for the time being, having been duly appointed to the office by her Majesty.

'*Post-Office acts*' and '*Post-Office laws*' shall mean all acts relating to the management of the post, or to the establishment of the Post-Office, or to postage duties, from time to time in force; and every officer mentioned shall mean the person for the time being executing the functions of that officer; and whenever in this act, or the schedules thereto, with reference to any person, or matter, or thing, or to any persons, matters, or things, the singular or plural number, or the masculine gender only is expressed, such expression shall be understood to include several persons, or matters, or things, as well as one person, matter, or thing, and one person, or matter, or thing, as well as several persons, or matters, or things; females as well as males; bodies politic or corporate, as well as individuals; unless it be otherwise specially provided, or the subject or context be repugnant to such construction."

vered under the Post-Office acts (*e*); but any justice of the peace having jurisdiction may hear and determine any offence which may subject any company to a pecuniary penalty not exceeding 20*l.* *To convey her Majesty's Mails.*

II. By the annual Mutiny Acts, justices of the peace are empowered, in cases of emergency, to provide carriages and horses, by compulsory powers, for the transport of troops; and, it being considered desirable to make some similar provision for despatching troops by railways, the Legislature has provided, that, whenever it is necessary to move any of the officers or soldiers of the line, ordnance corps, marines, militia, or the police force, by a railway, the directors are required to permit such forces, with their baggage, &c., to be conveyed at the usual hours of starting, at such prices, or upon such conditions, as may be contracted for between the Secretary-at-War and the railway company, upon the production of a route or order for their conveyance, signed by the proper authorities (*f*). This is the only general legislative enactment now in force applicable to railway companies incorporated previous to 1844; but a subsequent statute requires railway companies incorporated, or obtaining an extension of their powers, by any act passed in the then present session of Parliament, (7 & 8 Vict. c. 85, 1844), or in any subsequent session (*g*), to provide the before-mentioned conveyance at fares not exceeding the following scale:— *To convey her Majesty's troops.*

(*e*) 1 & 2 Vict. c. 98, s. 19, post, App., 10. As to the recovery of penalties under 1 Vict. c. 36, see ss. 12 to 24.

(*f*) 5 & 6 Vict. c. 55, s. 20, post, App., 27.

(*g*) But a clause is now inserted in every special act, whereby the company are made subject to the Genera Railway Acts, including 5 & 6 Vict. c. 55 and 7 & 8 Vict. c. 85.

To convey her Majesty's Troops.

For each commissioned officer proceeding on duty in a first-class carriage . . 2*d.* per mile.
For each soldier, &c., and their wives, or children above twelve years old . . 1*d.* per mile.
Children under twelve, and above three years old . . . . . ½*d.* per mile.
Children under three years old . . Free.

Such soldiers and their families must be conveyed in convenient and protected carriages; and every officer may carry one cwt., and every soldier, soldier's wife, &c., half a cwt. of personal luggage, free of charge; all excess being paid for at the rate of not more than one halfpenny per pound. All public baggage, stores, arms, ammunition, and other necessaries and things, must be conveyed at charges not exceeding twopence per ton per mile, the assistance of the military being given in loading and unloading such goods. But the company are not bound to convey gunpowder and other combustible matters, except upon such conditions as may be agreed upon by the Secretary-at-War and the company (*h*).

To provide third-class trains.

III. All passenger (*i*) railway companies incorporated or obtaining an extension of their powers in or after the session 7 & 8 Vict. c. 85, (1844), are required, by means of one train at the least, to travel along their railway from one end to the other, once at least each way on every week-day, (except Christmas-day and Good Friday, but this exception does not extend to Scotland), under the following conditions:—

(*h*) 7 & 8 Vict. c. 85, s. 12, post, App., 32.

(*i*) See the definition of a passenger railway company, 7 & 8 Vict. c. 85, s. 25, post, App., 37.

To provide Third-class Trains.

"To start at an hour to be from time to time fixed by the Directors, subject to the approval of the Board of Trade.

"To travel at an average rate of speed, not less than twelve miles an hour, including stoppages.

"To take up and set down passengers (if required) at every passenger station.

"Carriages to be provided with seats, and protected from the weather.

"Fares not to exceed one penny for each mile.

"Each passenger to be allowed half a cwt. of luggage, not being merchandise or other articles carried for hire or profit; and any excess to be charged by weight, at a rate not exceeding the lowest rate of charge for passengers' luggage by other trains.

"Children under twelve years of age to be carried at half fare, and children under three years, free" (*k*).

The foregoing enactment does not extend to the conveyance of third-class passengers on Sundays; but if a company runs *any* trains on that day, they are required, by such train (each way) as shall stop at the greatest number of stations, to provide carriages for third-class passengers, at a like fare of one penny for each mile (*l*). If any company refuse or wilfully neglect to comply with the foregoing provisions within a reasonable time, a penalty of 20*l.* per day is forfeited (*m*). But, for the relief of railway companies, it is provided, that no tax shall be levied upon their receipts in respect of the above-mentioned cheap trains (*n*). And the Board of Trade have a discretionary power to dispense with certain of the conditions imposed

(*k*) 7 & 8 Vict. c. 85, s. 6, post, App., 30.
(*l*) Id., s. 10, post, App., 31.
(*m*) Id., s. 7, post, App., 31.
(*n*) Id., s. 9, post, App., 31.

To provide Third-class Trains.

by the statute, if other more beneficial arrangements are substituted (*o*).

Regulations as to the gauge of railways, and as to engines and carriages to be used thereon.

IV. It being found expedient to define the gauge on which railways should be constructed, the stat. 9 & 10 Vict. c. 57, s. 1, enacts, that, after the passing of the act, it shall not be lawful, except as in the act is excepted, to construct any railway for the conveyance of passengers on any gauge other than four feet eight inches and a half in Great Britain, and five feet three inches in Ireland; but a provision is inserted, authorising the maintenance, repair, and extension of existing railways on any other gauge; and it is provided that the act shall not extend to railways constructed, or to be constructed, under any act containing any special enactment defining the gauge of such railway, or to any railway in its whole length southward of the Great Western Railway, or to railways in Cornwall, Devon, Dorset, or Somerset, for which acts shall be passed in the then present session of Parliament, or then in the course of construction, or to the railways to be constructed under the authority of the 9 & 10 Vict. *cc.* clxvi and ccxxxvi, or two other special acts particularly specified (*e*). It is also provided, that the railways authorised to be constructed by the 8 & 9 Vict. *cc.* cxc and xci, and by two acts of the 9 & 10 Vict., shall be constructed on the gauge of seven feet (*f*), and that the act shall not affect the provisions of the acts 8 & 9 Vict. *cc.* clxxxviii and clxxxiv (*g*). And it is enacted, that it shall not be lawful, after the passing of the act, to alter the gauge of any railway used for the conveyance of passengers (*h*).

(*o*) See these powers of dispensation, ante, 99.

(*e*) 9 & 10 Vict. c. 57, s. 2, post, App.

(*f*) Id., s. 3, post, App.

(*g*) Id., s. 5, post, App.

(*h*) Id., s. 4, post, App.

Regulations as to the Gauge of Railways, &c.

If a railway be constructed or altered contrary to the provisions of the act, the company are liable to a penalty of 10*l.* per mile per day; and the Commissioners of Woods and Forests, or the Lords of the Privy Council for Trade (*i*), may abate the railway (*k*). Penalties may be recovered as under the provisions of the 8 & 9 Vict. c. 20 (*l*).

With respect to the statutory provisions relating to the engines and carriages which may be used and brought upon railways, they seem to shew that it was in the contemplation of the Legislature to treat a railway as a common highway, open alike to all persons who may choose to put carriages thereon (*m*). The Railways Clauses Conso-

(*i*) Now transferred to the Commissioners of Railways. See 9 & 10 Vict. c. 105, s. 2, post, App.

(*k*) 9 & 10 Vict. c. 58, s. 7, post, App.

(*l*) See s. 145, post, App., 193.

(*m*) Experience has, however, proved, that, for purposes of safety, it is essentially necessary that the traffic on a railway should be exclusively under the control of the company. See *R.* v. *The London and South-western Railway Company*, 1 Q. B. 558, post; *R.* v. *The Grand Junction Railway Company*, 4 Q. B. 38, post. In the draft report before referred to, ante, 401, n. (*d*), the following observations are made:—

"The roads of a country, from the very nature of things, are public concerns: they are as necessary to a people as the air they breathe. The very nature of society implies that men should have access to each other for the supply of their respective wants, whether they live in towns, or are scattered over the face of a country; and the common sense of mankind tells them, that the roads and streets should be free from obstruction. In this country, from the remotest times the title of the Sovereign, as representing the nation, to the control of its roads, has always been allowed. The designation of King's Highways, by which the public roads were known, sufficiently indicates the right which the Crown possessed and exercised over them. The practice of intrusting to associations locally interested the making and repairing of roads, with the power of levying tolls to repay the outlay required for that purpose, which first became general towards the middle of the last century, amounted merely to a delegation for a time by the legislature, on certain conditions, of a portion of the powers of government to meet a public exigency, but never to a permanent transfer of them. The public have always possessed the right to control the trustees, and to withdraw from them the management of the highways included in their trusts; and there are repeated instances, in

Regulations as to the Charges of Railways, &c.

lidation Act enacts, on this subject, that, on payment of the tolls demandable, all persons shall be entitled to use the railway with engines and carriages properly constructed, as by that act or the special act directed, and subject to the provisions contained in the stat. 5 & 6 Vict. c. 55, and to the regulations to be from time to time made by the company (*n*).

And, with respect to the engines and carriages to be brought on the railway, it is enacted, that every locomotive steam-engine, if it use coal, or other fuel emitting smoke,

our own times, of the exercise of this right.

"The period is not remote since an extensive parliamentary inquiry was instituted into the state of the turnpike trusts of the country, when the right of the nation to regulate and control the management of its highways was practically vindicated, and, among other results, a number of toll-gates in the neighbourhood of the metropolis, felt as an inconvenience by its inhabitants, were ordered to be removed.

"But of all the means of communication between different parts of the country, that by railways is by far the most important. If it be necessary for the public welfare that a country should never divest itself in perpetuity of its right of property in its ordinary highways, it is still more important that it should not part with the right to control its railways. On an ordinary road there could have been no monopoly of the means of conveyance,—a man might travel by it at all hours, and in any manner he pleased; but on a railway he can only travel at such times and under such arrangements as those who are intrusted with its direction may choose to adopt. If one coach on a road charged too much, travelled at too slow or too quick a rate, or failed in other respects to give satisfaction, another might have been started: but on railways there is no option; the passenger must either submit to the regulations fixed by its directors, or abstain from using it. It has now been ascertained that the hope of relief from the objectionable course pursued on one railroad, by having recourse to a competing line, must, in a great measure, be abandoned. It is confidently stated by nearly all the witnesses examined by your Committee, that the public cannot count on being relieved by competition from the consequences of an abusive exercise of power on the part of railway companies. From the very nature of things, therefore, a railway company exercises a complete monopoly: but a monopoly subject to no responsibility, and under no efficient check or control, is necessarily an intolerable abuse; and it can only be rendered innoxious by subjecting it to rigorous control and supervision."

(*n*) 8 Vict. c. 20, s. 92, post, App., 183. As to the regulations which the company may make, see post, 415.

Regulations as to the Gauge of Railways, &c.

must be constructed on the principle of consuming its own smoke, otherwise the party using it is liable to a penalty of 5*l.* per diem (*o*). No engine may be brought on the rails, unless it has been first approved of by the company; and, on receiving notice, the company are required to send their engineer, or other agent, to examine the engine, and to report thereon to the company; and within seven days after the report, if the engine be proper to be used, the company must give a certificate of their approval. If an engine is out of repair, or unfit to be used, the company may forbid its use until it has been repaired; and, in case of a difference of opinion as to the fitness of an engine or carriage, the same is to be settled by arbitration (*p*). If improper engines or carriages are brought upon the railway, or used, a penalty is incurred (*q*). No carriage may be upon the railway (except in directly crossing the same) unless it be of the construction, and in the condition which the regulations of the company require (*r*). All regulations made by the company respecting carriages must be in writing under their common seal, and must be applicable alike to the carriages of the company, and to the carriages of other persons using the railway; and a copy of such regulations may be demanded by all persons (*s*). The owners of carriages using the railway must enter their names, and the numbers, weights, and gauges of their carriages, and also paint the same particulars on the carriages, if required so to do; and the carriages may be measured, &c. at the expense of the company (*t*); on default, the company may remove the carriage (*u*). If the carriage of any person using

(*o*) 8 Vict. c. 20, s. 114, post, App., 188.

(*p*) Id., ss. 115, 117, post, App., 188.

(*q*) Id., ss. 116, 119, post, App., 189.

(*r*) Id., s. 117, post, App., 189.

(*s*) Id., s. 118, post, App., 189.

(*t*) Id., s. 120, post, App., 189.

(*u*) Id., s. 121, post, App., 189.

Regulations as to the Gauge of Railways, &c.

the railway be improperly loaded, or suffered to obstruct the railway, it may be unloaded or removed, and all expenses must be paid by the owner; and the company are not liable for any damage or loss occasioned by unloading or removing a carriage or goods, except for their wilful or negligent acts, or any wrongful detainer (*x*). The owners of engines and carriages on the railway are answerable for any trespass or damage done by them or their servants, and servants may be convicted before two justices; and the owner may recover any money paid by him, from his servant, in the manner prescribed (*y*).

Regulations as to leasing railways.

V. Railway Companies are under various restrictions with reference to their powers of leasing a railway. The Railways Clauses Consolidation Act enacts, that, "where a company are authorised by their special act to lease the railway, or any part thereof, the lease to be executed in pursuance of such authority shall contain all usual and proper covenants on the part of the lessee for maintaining the part of the railway contained in the lease in good and efficient repair and working condition during the continuance thereof, and for so leaving the same at the expiration of the term, and all such other provisions, conditions, covenants, and agreements, as are usually inserted in leases of a like nature; and such lease entitles the company or person to whom it is granted to the free use of the railway or portion of railway comprised therein, and of all the powers and privileges granted to, and which might otherwise be exercised and enjoyed by the company, or the directors thereof, or their officers, agents, or servants, with regard to

(*x*) 8 Vict. c. 20, ss. 122, 123, post, App., 190.

(*y*) Id., ss. 124, 125, post, App., 190.

the possession, enjoyment, and management of the railway, or of the part thereof comprised in such lease, and the tolls to be taken thereon, shall be exercised and enjoyed by the lessee, and the officers and servants of such lessee, under the same regulations and restrictions as are by that or the special act imposed on the company, and their directors, officers, and servants; and such lessee shall, with respect to the railway comprised in such lease, be subject to all the obligations by that or the special act imposed on the company (*q*).

Many of the special railway acts passed during the early part of the session 1845, contained general powers, enabling railway companies to grant or accept a lease, sale, or transfer of their own or other lines of railway; but, it being afterwards considered that these powers ought not to have been granted, a statute was passed towards the close of that session, which enacts, that "it shall not be lawful for such companies, by virtue of any powers contained in any act passed in the then present session, to make or grant, or for any other railway company or party, by virtue of any such powers, to accept, a sale, lease, or other transfer of any railway, unless under the authority of a distinct provision in some act of Parliament to that effect, specifying by name the railway to be so leased, sold, or transferred, and the company or party by whom such lease, sale, or transfer may be respectively made, granted, or accepted" (*r*).

(*q*) Id., ss. 112, 113, post, App., 187.

(*r*) 8 & 9 Vict. c. 96, post, App. The above-mentioned restrictions of the powers to lease railways arise from a jealousy, which has induced the legislature to institute inquiries, as to the effects likely to be produced by the amalgamation of railways. In the Report of the railway department of the Board of Trade, dated 7 May, 1845, the following remarks are made upon this subject:—

"The present unsettled state of the railway system, when almost every day brings forward some proposal for a new railway, or some new combination among existing interests, renders it peculiarly undesirable that permanent amalgamations should be

Powers enabling the Lords of the Treasury to purchase railways, or revise the scale of tolls.

VI. If, after the end of twenty-one years from the passing of any railway act of the then or any subsequent session

precipitately allowed, unless in cases where the advantage to the public is perfectly manifest.

"These observations apply principally to the case of amalgamations between railways which have been originally projected and sanctioned as independent undertakings. There is another class of cases where new lines are brought forward by the aid of, and in alliance with, existing companies, who subscribe a portion of the capital, or guarantee a certain return upon it, and take powers to lease or purchase the line when made. In such cases, it is evident that greater latitude must be allowed, as otherwise the inducement to the existing company to support the new line would be, in a great measure, withdrawn, and in many cases the undertaking could not otherwise be supported. In such cases, it would appear to be fair to allow an existing company, promoting a line sanctioned as an useful undertaking, in exchange for a guarantie on their part to complete what they undertake, to purchase or amalgamate with themselves such small lines as may be considered natural branches of the parent line, and to lease, for a long period, such larger schemes as they may have promoted.

"Where such new schemes, however, are of sufficient magnitude to support themselves independently, and are not so intimately connected with the parent line as to be necessarily worked along with it, it may, in some cases, be advisable to make some provision for the existence of a degree of independence and local management in the new concern; and also for limiting the period during which the union of interest is to exist without the necessity of a fresh application to Parliament."

In connexion with this subject, it may be here remarked, that, in the session of 1846, a select committee was appointed by the House of Commons, "To consider the principle of amalgamation as applied to the railway and canal bills then under the consideration of Parliament." Two reports have been issued by this committee, and the following extracts point out the course of legislation which is recommended by the committee. In their first report, dated 8 April, 1846, the committee observe, "That, in discharging the duty imposed upon them, they have in the first instance applied themselves to the task of ascertaining how many of the railway and canal bills now before Parliament contain clauses involving the principle of amalgamation. It has been found difficult, if not impossible, to form a correct estimate of their number; but, making allowance for error, and exclusive of the Irish bills, it may be stated that they amount to about 161 for England, and about 56 for Scotland. Of this number, 37 are bills for the amalgamation, by purchase, lease, or otherwise, of existing railway companies with each other; 32, of railways with canals; 155 for the formation of new lines, and their amalgamation with existing companies or with each other. Amongst the last will be found bills containing clauses which give a general power of

of Parliament, (7 & 8 Vict., 1844), the clear annual profits divisible upon the subscribed and paid-up capital stock of such railway, upon the average of the three then last pre-

Powers enabling the Lords of the Treasury to purchase Railways, &c.

leasing the tolls, or leasing or selling the works or lines, with the view of effecting amalgamation at some future time with any company or companies which may be disposed to take advantage of the power so given; also bills which, containing clauses with a somewhat similar object, are, however, restricted to the option of two or more companies therein specified.

"In addition to and not included in the above list, there are several bills in which powers are taken by existing companies to contribute to the funds for the execution of the works of new lines; thereby securing, in proportion to the sums subscribed, a permanent influence in the future management of the company.

"Your Committee are by no means disposed to regard with undue jealousy, the principle of amalgamation. The benefits arising from it, if conducted within proper limits and under judicious regulations, are indisputable.

"To the suggestions and to the opinions expressed in the Report made by the railway department of the Board of Trade, on the 7th May, 1845, (see ante, 417), your Committee are disposed to give their general concurrence."

The Committee then make certain suggestions, with the view to carry out the principles recommended by the Report.

On the 4th May, 1846, the Committee agreed to their second Report. The following are extracts:—

"Your Committee have stated, in their former Report, that there are about thirty-two bills before Parliament, in which power is sought to effect the amalgamation of canals with railways. These may be classed under the following heads:—First, bills for the amalgamation, by lease, purchase, or otherwise, of entire lines of canal with competing lines of railway. Secondly, bills for the amalgamation of some canal forming a link in a chain of water communication, with a line of railway competing with the whole chain. Thirdly, bills for converting canals into railways."

The Committee then state, that the present extent of inland navigation in Great Britain, by means of canals, is estimated to be about 2,500 miles. After making some observations on the effects produced by the competition between railways and canals, the Committee say, "The general conclusion, therefore, to which your Committee have come is, that it would not be politic altogether to refuse the sanction of Parliament to the amalgamation of railways with canals. They would, however, strongly impress upon the attention of the committees to whom bills, whether for the amalgamation of canals with railways, or for the conversion of canals into railways, may be referred, that a most searching inquiry should be instituted into the merits of each case; and that their sanction should be given only in those instances in which it shall have been clearly proved that the amalgamation can be effected without prejudice to the public."

Powers enabling the Lords of the Treasury to purchase Railways, &c.

ceding years, shall equal or exceed 10*l.* per cent., the Lords of the Treasury may, upon giving three months' notice to the company, revise the scale of tolls, fares, and charges limited by the act relating to the railway, and fix such a new scale as shall be likely to reduce the divisible profits to 10*l.* per cent.; but no revised scale can take effect unless accompanied by a guarantee that the divisible profits, in case of any deficiency therein, shall be annually made good to the said rate of 10*l.* per cent.; and it is also provided, that a revised scale shall not be again revised, or the guarantee withdrawn, otherwise than with the consent of the company, for the further period of twenty-one years (*s*).

Or the Lords of the Treasury, at the end of the said period of twenty-one years, (whatever be the rate of divisible profits), may, upon giving three months' notice to the company, purchase any such railway, upon payment of a sum equal to twenty-five years' purchase of the annual divisible profits, or, in certain cases, at a price to be fixed by arbitration; but no option to purchase can be exercised whilst a revised scale of tolls is in force (*t*).

The above-mentioned option of revision or purchase is not applicable to any railway authorised to be made by any act passed previous to the session 7 & 8 Vict. c. 85, [1844], or to any new branch of such railway, if less than five miles in length. It is also provided, that the option to purchase any new branch shall not be exercised without including the railway also (*u*).

The directors of railways within the provisions above mentioned, are required to keep certain accounts of their receipts during the three years next preceding the period at

(*s*) 7 & 8 Vict. c. 85, s. 1, post, App., 28.

(*t*) Id., s. 2, post, App., 28.

(*u*) Id., s. 3, post, App., 28.

Powers enabling the Lords of the Treasury to purchase Railways, &c.

which the option of revision or purchase becomes available (*x*).

No notice of revision or purchase can be given under the above-mentioned powers, until an act of Parliament has been obtained for authorising the said guarantee or the levy of the purchase-money, and for determining the manner in which the option shall be exercised; and three months' notice of the intention to apply for such act of Parliament must be given to the company affected thereby (*y*).

(*x*) Id., s. 5, post, App. 29.

(*y*) Id., s. 4, post, App. 29. In the Document already referred to, ante, 401, note (*d*), the following remarks are made upon the above statute:—

"The first material attempt on the part of the legislature to place the public in a more advantageous position with regard to railways was not a very successful one. The 7 & 8 Vict. c. 85, provides, that, after a lapse of twenty-one years, when the dividends shall equal or exceed 10*l.* per cent., the Lords of the Treasury, on giving three months' notice, may revise the scale of tolls, fares, and charges. The hope of revision held out by this clause, was, however, quite illusory, for no precautions had been taken to settle the principle on which dividends should be calculated. The capital on which dividends were declared, exceeded, in many cases by large sums, the actual outlay; and there existed no efficient system of accountability by which Parliament could obtain anything like an accurate knowledge of the net profits of railway companies. By the Companies' Clauses Consolidation Act of 8 Vict., certain rules were laid down with respect to the augmentation of capital by the creation of new shares, but your Committee are given to understand that this act does not prevent companies from allocating shares among the proprietors at par when actually at a premium, in order that they may pocket the premiums.

"It is established by the most satisfactory evidence, that, in the case of many companies, large additions have been made to the nominal capitals, beyond what has been required by the actual outlay, through the creation of shares, not at the current market price, but at par. To take one of the most common operations of the successful companies: if, for instance, shares being at cent. per cent. premium, a million were required for an undertaking, and to raise that million, shares for a million were created, in order to enable the proprietors to divide among themselves another million in the shape of premiums, it is clear that the nominal capital exceeds by 500,000*l.* that of which the actual outlay required the creation; and, consequently, that a dividend is made on a sum exceeding by so much that outlay. In this way the object of Parliament, in subjecting companies to a revision of fares when the dividends should equal or exceed 10*l.* per cent., could always be de-

Powers to lay down branch railways.

VII. For the purpose of enabling branch railways to be made, in certain cases, the Railways Clauses Consolidation Act enacts, that "nothing in that act or the special act shall prevent the owners or occupiers of lands from laying down any collateral branches of railway, for the purpose of bringing carriages upon the railway, but subject to the pro-

fested. Mr. Hudson, a member of your Committee, specified several instances, in companies with which he was connected, where large additions were made to the nominal capitals by these and other means. For instance, he states, that, by an arrangement between the Great Northern and the Great North of England Railways, it was stipulated that the latter should receive 10*l.* per cent. on every 50*l.* share till 1851, when they had a claim to be paid off in 4*l.* per cent. stock at 250*l.* a share; thus creating a new nominal capital of 250*l.* for every 50*l.* He states also, that, to meet a purchase by the Newcastle and Darlington Company, new 25*l.* shares were issued to the proprietors at par, when they were at a premium of 20*l.* It is obvious that the money required could have been obtained by a much smaller issue of shares, had the 20*l.* premiums, as well as the 25*l.* shares, been applied to the purposes of the company, and not divided as a bonus among the proprietors.

"But by another section of this act, (the 2nd), the Lords of the Treasury are empowered, after the expiration of twenty-five years, to purchase the railways, whatever the rate of divisible profits may be, upon giving three calendar months' notice in writing of their intention, on payment of a sum equal to twenty-five years' purchase of their profits, estimated on the average of the three preceding years. This power to purchase on such extravagant terms, and under such limitations, held out small hopes of relief; so that, upon the whole, the position of the public with regard to railways was not thereby materially improved.

"Whilst your Committee thus express their regret that the public interests were so little consulted in the arrangements with railways for so long a period, they have seen with satisfaction the commencement of a better system. In consequence of sessional orders of the House, both in this and the previous session, clauses have been introduced into all acts relative to railways, either for the construction of new lines or the extension of old lines by branches, reserving the power, whenever it should be deemed necessary, to revise and regulate the scales of fares and charges; and as nearly all the great companies have either obtained or applied for acts for the construction of branch lines, and the extension of old lines, they have thereby enabled Parliament to place them under such control or superversion as it may be deemed expedient to adopt; and thus the hope may at length be entertained that means for securing the public against oppressive and extravagant charges will yet be adopted."

visions of the 5 & 6 Vict. c. 55 (*z*); and the company are required, at the expense of such owners, &c., to make openings in the rails, in places where the communication can be made with safety to the public, and without injury or inconvenience; and the company may not take any toll for the passing of passengers, &c. along any branch; but the branch may not run parallel to the railway, and openings may not be made in certain places; and persons using the branch are subject to the company's bye-laws, and are required to lay down the most approved off-set plates and switches (*a*).

Powers to lay down Branch Railway

The powers which may be exercised by the Commissioners of Railways in regulating branch railways have been already considered (*b*).

VIII. Every railway company is required to allow the Commissioners of Railways to establish and lay down upon their lands a line of electrical telegraph for her Majesty's service, and to give every reasonable facility for laying down and using the same on her Majesty's service, subject to such reasonable remuneration to be paid to the company as may be agreed upon, or, in case of disagreement, as may be settled by arbitration. And it is provided, that, subject to a prior right of use for the purposes of her Majesty, the telegraph may be used by the company, for the purposes of the railway, upon terms to be agreed upon, or, in case of disagreement, as may be settled by arbitration (*c*). If a line of electrical telegraph shall have been established by the company, or by any other persons, otherwise than exclusively for her Majesty's service, or exclusively for the purposes of the railway, or jointly for both, the use of such telegraph for the purpose of receiving and sending messages

Obligation to permit telegraphs to be constructed.

(*z*) See these provisions, post, App., 20.

(*a*) 8 Vict. c. 20, s. 76, post, App., 180.

(*b*) Ante, 90.

(*c*) 7 & 8 Vict. c. 85, s. 13, post, App., 33; 9 & 10 Vict. c. 105, post, App.

Obligation to permit Telegraphs to be constructed.

shall, subject to the prior right of use thereof for the service of her Majesty, and for the purposes of the company, and subject also to such equal charges, and to such reasonable regulations as may be made by the company, be open for the sending and receiving of messages by all persons alike, without favour or preference (*d*).

Obligation to pay duties, and tithe commutation rent-charges.

IX. The duties payable in respect of railway passengers are levied under stat. 2 & 3 Will. 4, c. 120, which enacts, That the company of proprietors of every railway in Great Britain, along which any passengers shall be conveyed for hire, in or upon carriages drawn or impelled by the power of steam or otherwise, shall pay, for and in respect of all such passengers, at and after the rate of one half-penny per mile for every four passengers so conveyed (*e*). But this tax is not payable in respect of passengers conveyed in the third-class trains, travelling under the conditions imposed by stat. 7 & 8 Vict. (*f*). And every company must keep a book open for the inspection of any authorised officer of stamp duties, containing an account of the passengers conveyed daily for hire along the railway, and, within five days next after the first Monday in every month, a copy of such account must be delivered to the Commissioners of Stamps, with an affidavit or affirmation, to be taken before a justice of the peace, of the secretary, chief clerk, or accountant of the company, verifying such account; and at the time of delivering this account, the stamp duties chargeable in respect of the passengers conveyed, according to such account, must be paid (*g*). Every company must also give a bond, with sufficient sureties, to be renewed as often as it shall

(*d*) 7 & 8 Vict. c. 85, s. 14, post, App., 33.

(*e*) 2 & 3 Will. 4, c. 120, s. 4, and Sched. (A.), post, App., 1.

(*f*) 7 & 8 Vict. c. 85, s. 9, post, App., 31.

(*g*) 2 & 3 Will. 4, c. 120, s. 50, post, App., 1.

become forfeited, or as the parties thereto shall die or become bankrupt or insolvent, or reside in parts beyond the seas, or whenever the Commissioners of Taxes shall require it to be renewed, for the due performance of all matters required to be done by the above act; and, on default of such bond being given or renewed, 100*l.* for every day of such default is forfeited (*h*). And it is provided, that the Commissioners of the Treasury may compound with the proprietors of any railway for the above-mentioned duties, during any period not exceeding seven years, and such compensation may be renewed from time to time (*i*).

Obligation to pay Duties, &c.

With respect to rent-charges, the stat. 7 & 8 Vict. c. 85, provides, that, if a rent-charge, or part of a rent-charge, apportioned under the Tithe Commutation Act upon lands taken or purchased by a railway company, or upon any part thereof, becomes in arrear, the person entitled to the rent-charge may distrain to recover such arrears upon the effects of the company, whether on the land charged with such distress or not (*k*). The company are also required to pay land-tax and poor-rate in respect of lands, whilst the railway is in the course of construction (*l*).

X. Every railway company must make such returns to the Commissioners of Railways as they may direct of the aggregate traffic in passengers, in cattle, and goods; also of all accidents attended with personal injury; and also a table of all tolls on each class passengers, and on cattle and goods conveyed on the railway; and if such returns are not delivered within thirty days after they are required, a penalty of 20*l.* a day during such neglect is incurred (*m*); and

Obligation to make certain returns.

(*h*) 2 & 3 Will. 4, c. 120, s. 51, post, App., 2.

(*i*) Id., s. 52, post, App., 2.

(*k*) 7 & 8 Vict. c. 85, s. 22, post, App., 36.

(*l*) 8 Vict. c. 18, s. 133, post, App., 151.

(*m*) 3 & 4 Vict. c. 97, s. 3, post, App., 15; 9 & 10 Vict. c. 105, s. 2, post, App.; and see further on this subject, ante, 98.

Obligation to permit Telegraphs to be constructed.

shall, subject to the prior right of use thereof for the service of her Majesty, and for the purposes of the company, and subject also to such equal charges, and to such reasonable regulations as may be made by the company, be open for the sending and receiving of messages by all persons alike, without favour or preference (*d*).

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(*f*) 7 & 8 Vict. c. 85, s. 9, post, App., 31.

(*g*) 2 & 3 Will. 4, c. 120, s. 50, post, App., 1.

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every officer of a company wilfully making a false return is guilty of a misdemeanour (*n*). And within forty-eight hours after the occurrence of an accident, attended with serious personal injury to the public using a railway, the company are required to give notice thereof to the Commissioners of Railways, under a penalty of 5*l.* for every day during neglect to give notice (*o*).

The Commissioners of Railways are also empowered to order any railway company to make a return of serious accidents occurring in the course of public traffic on a railway, whether attended with personal injury or not, in such form as they may require; and a like penalty of 5*l.* a day is incurred for neglect in making the return (*p*).

And, by a recent statute, the Lords Commissioners of her Majesty's Treasury may revise the scale of tolls or purchase certain railways at the end of twenty-one years after the date of their acts of incorporation; and the directors of such companies are required, during the last three years of the said term, to keep certain accounts (*q*).

And, lastly, by the Railways Clauses Consolidation Act, railway companies subject to that act are required to send an annual account of their total receipts and expenditure of all funds levied by them, with a statement of the balance of such account, duly audited; and shall, if required, transmit a copy of such account to the clerks of the peace, and also to the overseers of the poor of the parishes through which the railway passes (*r*).

Regulations as to matters of police.

XI. It is lawful for any officer or agent of a railway

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(*o*) 5 & 6 Vict. c. 55, s. 7, post, App., 21.

(*p*) Id., s. 8, post, App., 22; and see further on this subject, ante, 99.

(*q*) 7 & 8 Vict. c. 85, s. 5, post, App., 29; and see ante, 420.

(*r*) 8 Vict. c. 20, s. 107, post, App., 186.

company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine driver, waggon driver, guard, porter, servant, or other person employed by such or by any other railway company, or by any other company or person, in conducting traffic upon the railway belonging to the said company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed upon the railway, or who shall commit any offence against any of the bye-laws, rules, or regulations of the company, or shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon the railway, or the works thereof, shall or might be injured or endangered, or whereby the passage of any of the engines, carriages, or trains shall be or might be obstructed or impeded, and to convey such offender, or any person counselling, aiding, or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence was committed (*s*), without any other warrant or authority than that act (5 & 6 Vict. c. 55); and every person so offending, and every person counselling, aiding, or assisting therein as aforesaid, when convicted before such justice as aforesaid, is liable to two months' imprisonment, with or without hard labour, or to pay a fine of 10*l.* (*t*), or the justice may commit the person so charged for trial to the quarter sessions, and, on conviction, he may be imprisoned for any term not exceeding two years, with or without hard labour (*u*).

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(*s*) If the offence is committed in Scotland, see 5 & 6 Vict. c. 55, s. 18, post, App., 26.

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company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine driver, waggon driver, guard, porter, servant, or other person employed by such or by any other railway company, or by any other company or person, in conducting traffic upon the railway belonging to the said company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed upon the railway, or who shall commit any offence against any of the bye-laws, rules, or regulations of the company, or shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon the railway, or the works thereof, shall or might be injured or endangered, or whereby the passage of any of the engines, carriages, or trains shall be or might be obstructed or impeded, and to convey such offender, or any person counselling, aiding, or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence was committed (*s*), without any other warrant or authority than that act (5 & 6 Vict. c. 55); and every person so offending, and every person counselling, aiding, or assisting therein as aforesaid, when convicted before such justice as aforesaid, is liable to two months' imprisonment, with or without hard labour, or to pay a fine of 10*l.* (*t*), or the justice may commit the person so charged for trial to the quarter sessions, and, on conviction, he may be imprisoned for any term not exceeding two years, with or without hard labour (*u*).

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company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine driver, waggon driver, guard, porter, servant, or other person employed by such or by any other railway company, or by any other company or person, in conducting traffic upon the railway belonging to the said company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed upon the railway, or who shall commit any offence against any of the bye-laws, rules, or regulations of the company, or shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon the railway, or the works thereof, shall or might be injured or endangered, or whereby the passage of any of the engines, carriages, or trains shall be or might be obstructed or impeded, and to convey such offender, or any person counselling, aiding, or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence was committed (*s*), without any other warrant or authority than that act (5 & 6 Vict. c. 55); and every person so offending, and every person counselling, aiding, or assisting therein as aforesaid, when convicted before such justice as aforesaid, is liable to two months' imprisonment, with or without hard labour, or to pay a fine of 10*l.* (*t*), or the justice may commit the person so charged for trial to the quarter sessions, and, on conviction, he may be imprisoned for any term not exceeding two years, with or without hard labour (*u*).

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(*s*) If the offence is committed in Scotland, see 5 & 6 Vict. c. 55, s. 18, post, App., 26.

(*t*) 5 & 6 Vict. c. 55, s. 17, post, App., 26, extending 3 & 4 Vict. c. 97, s. 13, post, App., 17.

(*u*) 3 & 4 Vict. c. 97, s. 14, post, App., 18. Parties charged with offences under 5 & 6 Vict. c. 55, s. 17, may also be tried at the sessions. See 5 & 6 Vict. c. 55, s. 2, post, App., 20.

Obligation to make certain Returns.

every officer of a company wilfully making a false return is guilty of a misdemeanour (*n*). And within forty-eight hours after the occurrence of an accident, attended with serious personal injury to the public using a railway, the company are required to give notice thereof to the Commissioners of Railways, under a penalty of 5*l.* for every day during neglect to give notice (*o*).

The Commissioners of Railways are also empowered to order any railway company to make a return of serious accidents occurring in the course of public traffic on a railway, whether attended with personal injury or not, in such form as they may require; and a like penalty of 5*l.* a day is incurred for neglect in making the return (*p*).

And, by a recent statute, the Lords Commissioners of her Majesty's Treasury may revise the scale of tolls or purchase certain railways at the end of twenty-one years after the date of their acts of incorporation; and the directors of such companies are required, during the last three years of the said term, to keep certain accounts (*q*).

And, lastly, by the Railways Clauses Consolidation Act, railway companies subject to that act are required to send an annual account of their total receipts and expenditure of all funds levied by them, with a statement of the balance of such account, duly audited; and shall, if required, transmit a copy of such account to the clerks of the peace, and also to the overseers of the poor of the parishes through which the railway passes (*r*).

Regulations as to matters of police.

XI. It is lawful for any officer or agent of a railway

(*n*) 3 & 4 Vict. c. 97, s. 4, post, App., 15.

(*o*) 5 & 6 Vict. c. 55, s. 7, post, App., 21.

(*p*) Id., s. 8, post, App., 22; and see further on this subject, ante, 99.

(*q*) 7 & 8 Vict. c. 85, s. 5, post, App., 29; and see ante, 420.

(*r*) 8 Vict. c. 20, s. 107, post, App., 186.

Regulations as to Matters of Police.

company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine driver, waggon driver, guard, porter, servant, or other person employed by such or by any other railway company, or by any other company or person, in conducting traffic upon the railway belonging to the said company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed upon the railway, or who shall commit any offence against any of the bye-laws, rules, or regulations of the company, or shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon the railway, or the works thereof, shall or might be injured or endangered, or whereby the passage of any of the engines, carriages, or trains shall be or might be obstructed or impeded, and to convey such offender, or any person counselling, aiding, or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence was committed (*s*), without any other warrant or authority than that act (5 & 6 Vict. c. 55); and every person so offending, and every person counselling, aiding, or assisting therein as aforesaid, when convicted before such justice as aforesaid, is liable to two months' imprisonment, with or without hard labour, or to pay a fine of 10*l.* (*t*), or the justice may commit the person so charged for trial to the quarter sessions, and, on conviction, he may be imprisoned for any term not exceeding two years, with or without hard labour (*u*).

And every person who shall wilfully do, or cause to be

(*s*) If the offence is committed in Scotland, see 5 & 6 Vict. c. 55, s. 18, post, App., 26.

(*t*) 5 & 6 Vict. c. 55, s. 17, post, App., 26, extending 3 & 4 Vict. c. 97, s. 13, post, App., 17.

(*u*) 3 & 4 Vict. c. 97, s. 14, post, App., 18. Parties charged with offences under 5 & 6 Vict. c. 55, s. 17, may also be tried at the sessions. See 5 & 6 Vict. c. 55, s. 2, post, App., 20.

Regulations as to Matters of Police.

done, anything in such manner as to obstruct any engine or carriage using any railway, or to endanger the safety of persons conveyed upon the same, or shall aid or assist therein, is declared to be guilty of a misdemeanour, and may be imprisoned, with or without hard labour, for any term not exceeding two years (*x*).

It is also enacted, that, if any person shall wilfully obstruct or impede any officer or agent of any railway company in the execution of his duty upon any railway, or upon or in any of the stations, or other works or premises connected therewith; or if any person shall wilfully trespass (*y*) upon any railway, or any of the stations, or other works or premises connected therewith, and shall refuse to quit the same upon request to him made by any officer or agent of the company; every such offender, and all others aiding and assisting therein, may be seized and detained by any such officer or agent, or any person whom he may call to his assistance, until such offender can be conveniently taken before some justice of the peace for the county or place wherein such offence was committed, who may inflict a fine of 5*l.* on the offender, and, in default of payment, imprison him for two months, if the fine be not in the meantime paid (*z*). Proceedings cannot be quashed for want of form, or be removed by certiorari (*a*).

And the Companies Clauses Consolidation Act enacts, that it shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of that or the special act, or any act incorporated therewith, and whose home and residence shall be unknown to such officer or agent, and con-

(*x*) 3 & 4 Vict. c. 97, s. 15, post, App., 18.

(*y*) See *Manning* v. *The Eastern Counties Railway Company*, 12 M. & W. 237, ante, 248.

(*z*) 3 & 4 Vict. c. 97, s. 16, post, App., 18.

(*a*) Id., s. 17, post, App., 19.

Regulations as to Matters of Police.

vey him, with all convenient despatch, before some justice, without any other warrant and authority than that and the special act; and such justice shall proceed, with all convenient despatch, to the hearing and determining of the complaint against such offender (*b*).

So, by the Railways Clauses Consolidation Act, all officers and servants, and other persons on behalf of the company, and all constables, gaolers, and peace officers, may lawfully apprehend and detain any person who shall travel, or attempt to travel, without having paid his fare, and with intent to avoid payment, or who shall knowingly and wilfully proceed beyond his distance, with intent to avoid payment of the additional fare, or who shall knowingly and wilfully refuse or neglect to quit the carriage on arriving at the point to which he has paid his fare (*c*).

And if any person wilfully obstructs any person setting out the line of the railway, or pulls up stakes or marks shewing the line, he is liable to a penalty of 5*l.* (*d*).

Regulations as to bye-laws.

XII. The jurisdiction of the Commissioners of Railways in respect of bye-laws has been already considered (*e*).

A railway company may from time to time make regulations for the following purposes:—

For regulating the mode by which, and the speed at which, carriages using the railway are to be propelled;

For regulating the times of the arrival and departure of carriages;

(*b*) 8 Vict. c. 16, s. 156, post, App., 113. See also a similar clause in 8 Vict. c. 20, s. 154, post, App., 195.

(*c*) 8 Vict. c. 20, ss. 103, 104, post, App., 185.

(*d*) Id., s. 24, post, App., 164.

(*e*) Ante, 93. See also the model code usually adopted, ante, 95.

Regulations as to bye-laws.

For regulating the loading or unloading of carriages, and the weights which they are to carry;

For regulating the receipt and delivery of goods, and other things which are to be conveyed;

For preventing the smoking of tobacco, and the commission of any other nuisance, in carriages, or in the premises occupied by the company;

And, generally, for regulating the travelling upon, or using and working of the railway.

And, for better enforcing the observance of such regulations, the company may, subject to the provisions of the 3 & 4 Vict. c. 97 (*f*), make bye-laws, and, from time to time, repeal or alter them; such bye-laws must be reduced into writing, and have the common seal of the company affixed; any person offending against a bye-law is liable to a penalty; and if the infraction of the bye-law is attended with danger and annoyance to the public, or hindrance to the company, they may interfere summarily to obviate the danger, &c. (*g*). The substance of such bye-laws must be printed, and kept affixed on the front of the company's premises, otherwise a penalty may not be enforced (*h*). The company are justified in acting upon such bye-laws, and a provision is made for proving their publication (*i*).

The company may also make bye-laws, for regulating the conduct of their officers and servants, and for providing for the due management of the affairs of the company, and alter and repeal the same; such bye-laws must be authenticated by the seal of the company, and a copy given to

(*f*) Post, App., 15.

(*g*) 8 Vict. c. 20, s. 109, post, App., 187.

(*h*) Id., s. 110, post, App., 187.

(*i*) Id., s. 111, post, App., 187. And see 8 & 9 Vict. c. 113, s. 1, post, App.

Regulations as to Bye-laws.

every officer and servant affected thereby (*k*). A penalty, not exceeding 5*l.* for each offence, may, by such bye-laws, be imposed upon all persons being officers and servants of the company (*l*). But so that a justice may order a part only of the penalty to be paid (*m*). A copy of bye-laws, with the common seal of the company affixed, is sufficient evidence of bye-laws (*n*).

The power of making bye-laws is an extraordinary one, and must be construed strictly. It is laid down as a principle, that all bye-laws in restraint of trade must be reasonable and beneficial to the public, or else they cannot be supported (*o*). Thus, where, by a local act, the proprietors of a public navigation were empowered to make bye-laws for the good government of the company, and for the good and orderly using of the navigation, and also for the well governing of the bargemen, watermen, and boatmen, who should carry any goods upon any part of the navigation, and to impose such reasonable fines upon all persons offending against the same, as to the company should seem meet, the company made a bye-law that the navigation should be closed every Sunday throughout the year, and that no business should be transacted thereon during that time, (works of necessity only excepted), nor should any person during such time navigate any boat, &c., it was decided, that the above bye-law was illegal and void, and not authorised by the statute (*p*).

(*k*) 8 Vict. c. 16, s. 124, post, App., 108.

(*l*) Id., s. 125, post, App., 108. Bye-laws inflicting penalties on persons other than officers or servants of the company, must be approved of and allowed by the Commissioners of Railways, see ante, 94; and must be published, see ante, 430.

(*m*) Id., s. 126, post, App., 108.

(*n*) Id., s. 127, post, App., 108. And the seal need not be proved. See 8 & 9 Vict. c. 113, s. 1, post, App.

(*o*) *The Master, &c. of Gunmakers' Co.* v. *Fell*, Willes, 389; *Bosworth* v. *Herne*, Cas. temp. Hardw. 409.

(*p*) *The Calder and Hebble Navigation Company* v. *Pilling*, 14 M. & W. 76.

CHAPTER II.

THE RIGHTS AND LIABILITIES OF RAILWAY COMPANIES, AS CARRIERS OF GOODS AND PASSENGERS.

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The company considered as carriers of goods and passengers.

I. The railway company, as we have seen, are required to permit carriages, properly constructed (*a*), to pass on the railway on payment of the tolls authorised by the special act, or the company may themselves provide steam power and carriages, for the purpose of conveying passengers and goods, for which they may make such reasonable charges as they may determine upon, not exceeding the charges by the special act authorised to be taken (*b*).

(*a*) See ante, 413.

(*b*) Each special act must be referred to for the purpose of ascertaining the tolls and charges which a company may take; and it will be seen, that the provisions contained in these acts are very variable. The following statement, extracted from Mr. Bigg's Collection of Special Railway Acts, passed 8 & 9 Vict. (1845), shews the variation in the maximum charges authorised by the special acts of that session (p. xxvii, Introd.):—

	Lowest Maximum Charge.	*Highest Maximum Charge.*
ANIMALS, per mile		
Horses . .	3*d.*	6*d.*
Sheep . . .	0½*d.*	2½*d.*
Carriages . .	4*d.*	10*d.*
GOODS, p' ton p' mile		
Coals . .	1*d.*	4*d.*
Corn . .	1½*d.*	6*d.*
General merchandize . .	2½*d.*	6*d.*
PASSENGERS, per mile		
First Class .	2*d.*	4*d.*
Second Class .	1½*d.*	3*d.*
Third Class .	1*d.*	2½*d.*

For the construction of words inserted in tariffs of tolls, see *R.* v. *The Leicestershire and Northampton Union Canal Company*, 3 Railway Cases, 1; *The Stockton and Darlington Railway Company* v. *Barrett*, 8 Scott, N. R., 641.

The Company considered as Carriers of Goods and Passengers.

The Railways Clauses Consolidation Act contains the following provisions on this subject:—

The company are authorised to use locomotive engines, or other moving power, and carriages drawn thereby, and to carry passengers and goods, at reasonable charges, not exceeding the tolls by the special act authorised, (8 Vict. c. 20, s. 86, post, App., 182); or they may contract with any other railway company for the passage along their railway of carriages, &c. belonging to such other company, or vice versâ, and for such purposes they may enter into any contract for the division or apportionment of the tolls, (*Id.*, s. 87, post, App., 182); but no such contract shall alter any tolls which the parties to such contracts shall be entitled to receive from any person or any other company; but all other persons and companies may, notwithstanding the contract, be entitled to use the railway, as if no such contract had been entered into. (*Id.*, s. 88, post, App., 182). The company may not be charged or made liable, further or in any other case than where stage-coach proprietors and common carriers would be liable, and are entitled to the benefit of every protection and privilege which stage-coach proprietors and common carriers enjoy. (*Id.*, s. 89, post, App., 182).

The following section is deserving of notice, especially with reference to the decisions stated in the note (*c*):—After

A hamper consigned by a carrier to his agent, containing many small parcels, may not be charged as for distinct parcels.

(*c*) Several questions have arisen on the construction of special acts, containing provisions nearly similar to the above. The importance of the subject seems to demand a full statement of the cases. In *Pickford* v. *The Grand Junction Railway Company*, (10 M. & W. 399; 3 Railway Cases, 193), a special verdict was found, by which it appeared that the defendants were authorised, by their act of Parliament, (s. 156), to carry and convey upon the railway all such passengers, goods, merchandize, &c. as should be offered to them for that purpose, and to make such reasonable charges for such carriage and conveyance as they might from time to time determine on. Sect. 159 authorised the company also to fix the sums to be charged in respect of

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reciting that it is expedient that the company should be enabled to vary the tolls upon the railway so as to accom-

small parcels, not exceeding 500 lbs. weight each. By a subsequent act, (s. 19), they were empowered to carry passengers and goods on other railways, and to make such reasonable charges for such carriage as they should determine on. And by another act, (s. 20), it was enacted, that the charges by the former acts authorized to be made for the carriage of passengers or goods should be at all times charged equally, and after the same rate in respect of all passengers, goods, &c. conveyed or propelled by a like carriage or engine, passing on the same portion of the line, and under the same circumstances. The company published a list of rates for the carriage of merchandise, divided into seven classes, of which the lowest was 16s., and the highest 60s. per ton; and for boxes, bales, hampers, or other packages, when they contained parcels or other packages or things under 112 lbs. weight each, directed, consigned, or intended for different persons, or for more than one person, they imposed a charge of 1*d*. per pound weight. It appeared that the plaintiff, who was a carrier, made up a package above 500lbs. weight, and directed it to one person, although, in fact, it contained a number of parcels under 112 lbs. weight each, consigned or directed to different persons. The defendants made a charge as for separate parcels, and one of the questions submitted to the Court was, whether this was a reasonable charge. *Cur. adv. vult.*

The judgment of the Court was now delivered by *Parke*, B., as follows:—"The company, in their character of common carriers, are bound to carry for reasonable charges, if reasonable charges are tendered to them. The first question, then, is resolved into this, whether, for the two hampers containing small parcels consigned to different persons, it is reasonable to charge either for each parcel contained in the hamper separately, or 1*d*. per pound on the gross weight of each hamper and its contents. The charge is no doubt to be varied according to the trouble, expense, and responsibility attending the receipt, carriage, and delivery of different articles; and for small parcels more ought to be paid than a proportionate part, according to weight, of the price of larger parcels of the same commodity, by reason of the greater trouble in receiving, despatching, and delivering them, and their exposure to a much greater risk of abstraction or loss. But if all the small parcels are united in one large package, and delivered to the carrier in that package, consigned to one person, the trouble and responsibility are apparently reduced precisely to the same degree as if all the articles contained in the package were the property of the same owner, and intended to be delivered to him. There would seem, therefore, to be no right to charge for such package of distinct parcels, belonging to different owners, more than if they belonged to the same. But then it is argued, on the part of the defendants, that there really is an increased responsibility, arising from the simple fact that each parcel is the property of a distinct owner; because it is said, that, in the

modate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose

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event of a misdelivery, the company would be liable to several actions of trover instead of one, and even in case of loss or damage by neglect, each separate owner might maintain an action on the custom of England, in respect of his own goods. It is very doubtful at least whether, on the custom of England, separate actions could be maintained, as the relation of employer and carrier would not have subsisted between them and the company, but between them and the plaintiffs. As actions of trover, however, could be maintained, it would not be unreasonable to allow some additional remuneration, on account, not of the liability to pay greater damages, for they would be the same in both cases, but to pay the same damages by means of different suits. We are relieved, however, from the necessity of deciding what the precise amount of additional compensation (which, at all events, should be trifling) on this account should be, because it is admitted, on the special case, that the sum tendered is proper, unless the defendants had a right to charge for separate parcels, which they certainly had not, because neither the trouble, expense, nor responsibility was the same as if the parcels had been separate, or unless the defendants had a right to charge 1*d.* a pound on the whole. We have no difficulty in saying that this last-mentioned remuneration is excessive, and unjustified by the increase of responsibility from the circumstance of the properties being separate. It is impossible to support on this ground a charge of 4*l.* 1*s.* 8*d.* for the first package, for which, if it had consisted of parcels one property, 1*l.* 6*s.* 6*d.* would have been the proper charge, and a charge of 3*l.* 1*s.* 6*d.* instead of 9*s.* for the second."

A second question was also stated in this case for the opinion of the Court. It appeared that the defendants also became carriers on the London and Birmingham line, and published a list of charges for the carriage of goods from Manchester to London, among which "Manchester packs" were charged 3*s.* 3*d.* per cwt., or 65*s.* per ton. At the foot of this list was a notice, that "goods were brought to the station at Camden Town without extra charge," and that there was "no charge for booking or delivery in London." The company made an agreement with Chaplin & Horne, that the latter should carry from the station at Camden Town, and deliver in London, all such goods carried by the railway, and for so doing should receive 10*s.* per ton out of the entire charge of 65*s.* per ton. The plaintiff, who was a carrier, was desirous of receiving his goods at the station at Camden Town, and he required the company to make him a like allowance of 10*s.* per ton, but the company refused to make any such allowance.

If a carrier wishes to receive his goods on their arrival at the terminus of the railway, the company are not entitled to charge him the same sum for carriage as they charge to other persons whose goods are delivered to the consignee at the final point of their destination.

Parke, B.—"As to the second question, the Court have already intimated their opinion, that the company cannot support a claim for the same sum for carriage to Camden Town, and for carriage thither and delivery at any place in London. By the provisions already referred to, they are to carry for reasonable charges for carriage, and, by sect. 26 of the statute, such charges are to be

The Company incorporated for Carriage of Goods and Passengers.

of prejudicing or favouring particular parties, or for the purpose of collusively and unfairly creating a monopoly,

made equally; and it is clearly unreasonable and unequal to charge the same sum to a consignee who is willing to receive the goods at Camden Town, and one who requires them to be delivered at the London Docks, or elsewhere in London. The plaintiffs are bound to pay the balance of the 65s. per ton, after deducting the reasonable charge for delivering in London, and no more, and the defendants must carry to and deliver at Camden Town for that sum."—See, also, the second point in *Parker* v. *The Great Western Railway Company*, post, 437.

Where, in charging for the carriage of goods, a railway company allowed carriers on the railway 10*l.* per cent. as an equivalent for collecting, &c. the goods, but refused to make a like allowance to a particular carrier, —*Held*, that this was illegal, although the company were willing to perform, for the particular carrier, all the things which formed the consideration for the allowance.

In a subsequent case, *Parker* v. *The Great Western Railway Company*, (7 Man. & G. 253), the plaintiff sued the defendants for money which he had been compelled to pay, under protest, for the carriage of certain goods; and the question raised for the opinion of the Court was, whether the defendants were justified in demanding the various sums charged by them. The special case set out several heads of claim, in respect of which the plaintiff contended that he had been overcharged. The facts stated, as to two heads of claim, were, that the defendants acted as carriers for the public, and that they issued certain scales of their charges for carriage of goods, including the collection, loading, unloading, and delivery of parcels. They also carried goods for other carriers, to whom they made certain allowances, as an equivalent for the trouble of the collection, &c. of parcels, such collection, &c. being performed by the carriers. But, in their dealings with the plaintiff, who was a carrier, they refused to make such allowances, but were willing to perform for him all the things which formed the consideration for such allowances. *Cur. adv. vult.*

Tindal, C. J., in delivering judgment, observed on this part of the case, "It appears clearly to have been the intention of the legislature, that the parties incorporated should be empowered to construct the railway, and hold it as their property, and derive certain profits from it, but that every member of the community should have an equal right to use it on the terms prescribed by the act, and that the payment to be made for such uses, whether under the denomination of rates or tolls, or charges fixed by the company, should be reasonable and equal to all persons, without reference to the particular advantage to be derived by any individual, or class of individuals, from such uses. And it is to be observed, that the language of these acts of Parliament is to be treated as the language of the promoters of them. They ask the legislature to confer great privileges upon them, and profess to give the public certain advantages in return. Acts passed under such circumstances should be construed strictly against the parties obtaining them, but liberally in favour of the public.

Now, have the charges been reasonable and equal in the instances stated in this case, or was there an advance in the charges for the carriage of goods by the company, directly or indirectly, against the plaintiff? And, first, with

either in the hands of the company or of particular parties, it is enacted, that it shall be lawful, therefore, for the com-

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regard to the allowance of 10*l.* per cent. As to that, it appears that the company have always, for the carriage of goods, charged the public at the rates specified in certain printed bills, and a scale-book, annexed to this case; and that for such charge they have performed the loading and re-loading of the goods, as explained in the case; and also the weighing, whenever they thought that necessary; but that, by a general arrangement with carriers, the latter have performed all those duties, and, in addition, have made out what are called 'ticking-off notes,' and 'carriers' declaration tickets,' and have been allowed by the company a deduction of 10*l.* per cent. from the charges made to the public at large. And the case proceeds to state, that the loading, unloading, and weighing, and the preparation of ticking-off notes and carriers' declaration tickets, was a reasonable equivalent for the allowance of 10*l.* per cent. or, in other words, that the carriers, discharging those duties at their own expense, and receiving an allowance of 10*l.* per cent., are thereby placed on an equal footing with the public, who are at no such expense and trouble. Can it, then, be said, that the same charge is reasonable both for the public at large and the carrier, when the latter discharges, at his own expense and for the benefit of the company, certain duties, for which an allowance of 10*l.* per cent. is no more than a fair equivalent; and, if that allowance is refused to one carrier, although willing to discharge, and in fact discharging, all that other carriers do in respect of it, can it be said that the company do not, directly or indirectly, advance against such carrier their charges for the conveyance of them by them? It appears to us, that the full charge to the plaintiff, a carrier, under such circumstances, is not reasonable, and that the charge of the company for the conveyance of goods by them has been raised against him, and that they could not legally make the larger charge upon him, notwithstanding the statement in the case, that, where the allowance of 10*l.* per cent. was not made to, or continued with, the plaintiff, the company were ready and willing to perform all the things which formed the considerations for that allowance."

"As to the second head of claim, viz. the allowance of 5*d.* and 10*d.* for the collection and delivery of parcels of and under the weight of 1 cwt., and of and under, the weight of 2 cwt., respectively, the case of *Pickford* v. *The Grand Junction Railway Company* (10 M. & W. 399, ante, 435) is a direct authority that the company had not a right to charge the plaintiff the same sum for the carriage of goods for him as they charge to the public; for, in the latter case, the charge includes the cost of collection and delivery, which the plaintiff did for himself."

As to a third head of claim made by the plaintiff, the case stated that the company, in their transactions with the public and with carriers, made the following distinctions as to their charges for carriage. In the case of the public, if there were several packages from one consignor to several consignees, or from several consignors to one consignee, the charge was upon the aggre-

A railway company are bound to treat a carrier on the railway, in making their charges for the carriage of goods as consignor and

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pany, subject to the provisions and limitations therein and in the special act contained, from time to time to alter or

consignee for all purposes, including the mode of charging in the aggregate.

gate weight. In the case of carriers, if there were several packages for several consignees, the charge was upon the separate weight of each package, unless more than one package belonged to the same consignor (not being the carrier) or was going to the same consignee, in either of which cases the charge was upon the aggregate weight. But in such cases the company recognised the carrier only as the consignor and consignee of the goods, the agent of such carrier, in fact, receiving the goods at the end of the transit.

Tindal, C. J., on this part of the case, said—"The third head of claim arises out of an alleged difference in the charges made by the company to the public at large, and to carriers, for the conveyance of goods, such difference not being directed against any individual carrier, but against all carriers as contra-distinguished from individuals of the public at large. As to this difference, the case states that when one of the public has brought several packages of goods and paid the charges, the company have charged him the weight of the aggregate, although they may have belonged to different consignees: also, if several of the public have brought several packages addressed to one consignee, who was to pay the charges, such consignee has been charged upon the weight of the aggregate; but, if a carrier has brought several packages consigned by or to different individuals, he has been charged upon the separate weight of each, unless it was known that more than one package belonged to the same sender, and was going to the same consignee; in which case, all belonging to the same sender, and going to the same consignee, were charged upon their aggregate weight. And in all such cases where carriers were concerned, the Company dealt with, and recognised, the carriers only as their consignor and consignee of the goods. In addition to this, from the 28th of February, 1842, till the commencement of this suit, the company enforced a system of charging the plaintiff and other carriers for the carriage, by the weight of every parcel of goods above 2 cwt. and under 1 ton, separately, even though the several parcels were intended, not merely for the plaintiff's or other carrier's consignee, but also for ultimate delivery to the same person, and though they were goods of the same class, carried by the same train; in all cases where the names of the carriers, consignor, or consignors of such goods were not given; but in all cases where the names of such consignors were given, all such parcels, if sent from the same carrier's consignor to the same carrier's consignee, were charged on the aggregate, and not separately. The case further states, that, on all occasions when the Company have carried goods for the plaintiff, they have dealt with him only, and have refused to recognise any other person, either as consignor or consignee. It appears to us, then, that the company are bound to treat the plaintiff as consignor and consignee for all purposes, including the mode of charging in the aggregate; and that they have no right to make a distinction in that respect between him and any other individual member of the public. Of the sum constituting this third head of claim, it appears that a small portion, 17*l.* 5*s.* 5*d.*, would not have been

vary the tolls by the special act authorised to be taken, either upon the whole or upon any particular portions of

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charged, had he disclosed the names of the consignors and consignees of the goods; but we find nothing in the statute requiring him to make such disclosure; and the company had no right to withhold from him, in consequence of his refusal to make it, any allowance to which he would have been otherwise entitled. Upon the whole, then, it appears to us that the company had no right to enforce from the plaintiff payment of any of the sums of money which constitute the three heads of claim set forth in the case."

An injunction was refused by the Lord Chancellor to restrain a railway company from charging a smaller fare to passengers who travelled from H. to D., with an intention of proceeding from the latter place to London by another railway, than they charged passengers from H. to D., who had no such intention.

In *The Attorney-General* v. *The Birmingham and Derby Junction Railway Company*, (2 Railway Cases, 124), a question of a somewhat different nature from those determined in the foregoing cases, was raised. The Attorney-General filed an information; and, on motion for an injunction, it appeared that the railway of the defendants, commencing at Derby, communicated with the London and Birmingham Railway at Hampton-in-Arden. The Midland Counties Railway formed a communication between Derby and the London and Birmingham Railway at Rugby. The Birmingham and Derby Railway Act empowers that company to receive, from passengers conveyed by the company's carriages, tolls not exceeding a specified amount. A subsequent act, for authorising an alteration in the line of railway, provides (sect. 63), "that the charges by the first act authorised to be made for the carriage of passengers, goods, or other matters or things, shall be at all times charged equally, and after the same rate per ton per mile, in respect of all passengers and goods of a like description, and conveyed or propelled by a like carriage or engine, passing on the same portion of the line only, and under the same circumstances, and that no reduction or advance in any charge for conveyance by the company, or for the use of any locomotive power to be supplied by them, shall be made either directly or indirectly in favour of or against any particular company or person travelling upon, or using the same portion of the railway, under the same circumstances." After the opening of the Midland Counties Railway, the Birmingham and Derby Junction Railway Company charged passengers conveyed by their carriages from Derby to Hampton-in-Arden, 8*s*.; while they charged other passengers proceeding from Derby to Hampton-in-Arden, and thence to London, only after the rate of 2*s*., between Derby and Hampton-in-Arden.

The *Lord Chancellor* refused the injunction, with costs. He said—"I assume that the defendants charge that which they have a right to charge within their limits, between Derby and Hampton-in-Arden; therefore, the Attorney-General now asks me to interfere, to prevent the company carrying passengers at too cheap a rate. This is evidently the true complaint, because it is not denied that they carry those who are going to Hampton-in-Arden at the charge which they are authorised to make, but persons travelling under other circumstances, not intending to stop there, but going on to London, are charged 2*s*. instead of 8*s*. Now, I do not know who will suffer by that

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the railway, as they shall think fit: Provided that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton per mile or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made, either directly or indirectly, in favour of or against any particular company or person travelling upon or using the railway. (8 Vict. c. 20, s. 90, post, App., 182). If a railway be amalgamated with an adjoining railway, tolls may not be charged at a rate calculated as on the fraction of a mile, but at such rates as if the amalgamated railways had originally formed one line. (*Id.*, s. 91, post, App., 183). Upon payment of the tolls demandable, all companies and persons are entitled to use the railway with engines and carriages, properly constructed, subject to the provisions of the 5 & 6 Vict. c. 55 (*d*), and to the regulations made by the company. (*Id.*, s. 92, post, App., 183). A list of tolls must be exhibited at all stations where tolls are payable, (*Id.*, s. 93, post, App., 183); and mile-stones, and posts at the distance of one

arrangement, whatever may be the cause of it. But it is not necessary to say anything about the jurisdiction of the Court, or how far I should interfere if I had the power, because I am quite clear that the 63rd section has not the slightest reference to this case. That was for the purpose of preventing those who should get the monopoly of the carriage of the public from exercising that monopoly to the prejudice of individuals; that is to say, that they shall not be at liberty to carry the goods of one manufacturer, and refuse the goods of another. It was to give an equal right to the public to the conveyance, and if there was any doubt about the earlier part of the clause, the latter part of the clause is in terms so. That was the object of the clause, and not to prevent the company from making such arrangements, within the powers of their act, as they might find most convenient to themselves. I think this is an experiment which is not likely to be repeated, and I shall dismiss the motion, with costs."

(*d*) Post, App., 20.

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quarter of a mile from each other, must be set up and maintained by the company, (*Id.*, s. 94, post, App., 183); otherwise tolls cannot be collected. (*Id.*, s. 95, post, App., 183). Penalties are incurred for defacing notice-boards or mile-stones. (*Id.*, s. 95, post, App., 183). Tolls are payable to such persons and at such places as the company shall appoint. (*Id.*, s. 96, post, App., 184). On default of payment of tolls (*e*) for carriages or goods, the company may detain and sell any carriages and goods on their premises belonging to the defaulter, and pay themselves; or tolls may be recovered by action at law. (*Id.*, s. 97, post, App., 184). The owner of carriages or goods must deliver to the company an exact account, in writing, of the number and quantity of the goods, &c. conveyed, (*Id.*, s. 98, post, App., 184); and if any person fails to give such account, or if he gives a false account, or if he unloads goods with intent to avoid payment of tolls, he is liable to a penalty in addition to the tolls. (*Id.*, s. 99, post, App., 184). Disputes concerning the amount of the tolls may be settled by a justice. (*Id.*, s. 100, post, App., 184). If any difference arises respecting the weight, quantity, quality, or nature of the goods conveyed, the company may detain the carriage or goods, and examine the same; and if, upon examination, the goods appear to be of greater weight, &c., the party giving the false account is liable to pay the costs of the examination; but if the result be otherwise, the company are liable to pay such costs, and also damages for the detention of the goods. (*Id.*, s. 101, post, App., 184). If it appear to a justice, that such examination and detention were without reasonable ground, or vexatious, then the collector is liable personally to pay the costs and damages, and the justice may

(*e*) See the interpretation clause, post, App., 157, as to the meaning of the word "tolls."

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issue a warrant for the recovery of the same. (*Id.*, s. 102, post, App., 185). If a passenger endeavours to avoid paying his fare, in any of the modes prescribed, he is liable to be fined, (*Id.*, s. 103, post, App., 185); and he may be apprehended and detained until he can conveniently be taken before a justice. (*Id.*, s. 104, post, App., 185). Aqua fortis, and other like dangerous goods, may not be sent on the railway; and if any person sends such goods without giving notice to the company, he is liable to a penalty; and suspicious parcels may be opened. (*Id.*, s. 105, post, App., 185).

The result is, that a railway company may be simply the owners of the way on which others may place steam power and carriages, and convey persons and goods; or they may unite both characters, of owners of the way and carriers on it, in themselves. But, although the railway is thus, under certain restrictions, thrown open to the public as a highway, experience proves, that, as the stations and watering-places are necessarily under the entire control of the company, they, to a considerable extent, enjoy a monopoly as carriers on the line. It seems, therefore, to be within the scope and object of this work to state a few of the leading principles of law applicable to carriers.

It was decided in an early case, that railway companies engaged in carrying goods on a railway are common carriers (*f*); they are therefore subject, in that character, to the same liabilities that other common carriers are subject to. If any doubt existed on this point, it is now removed by the Railways

(*f*) *Palmer* v. *The Grand Junction Railway Company*, 4 M. & W. 749. And see *Carpue* v. *The London and Brighton Railway Company*, 5 Q. B. 747. In some of the early special railway acts, a notice of action is required "for anything done, or omitted to be done," in pursuance of the act. It seems, however, that, in actions brought against such companies for negligence as carriers, they are not entitled to a notice under this section. *Ibid.*

Clauses Consolidation Act, which provides "that nothing in that act or in the special act contained shall extend to charge or make liable a railway company further or in any other case than where, according to the law of the realm, stage-coach proprietors and common carriers would be liable; nor shall extend, in any degree, to deprive the company of any protection or privilege which common carriers or stage-coach proprietors may be entitled to; but, on the contrary, the company shall, at all times, be entitled to the benefit of every such protection and privilege" (*g*).

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II. It is now proposed to treat of the liabilities of carriers at common law.

Liabilities of carriers at common law.

At common law, a common carrier stands in the situation of an insurer of the property entrusted to him, and he is answerable for every loss or damage happening to it whilst in his custody, no matter by what cause occasioned, unless it were by the act of God, such as a tempest, or that of the king's enemies. Common carriers are also responsible for the wrongful acts of mere strangers, in regard to the property bailed to them for transportation, notwithstanding they are not personally, or by their servants, guilty of any negligence or omission of duty; for the case is not within the exception of the act of God or of the public enemy; and they have their remedy over against the wrongdoer for the damages they may sustain by his wrongful act (*h*). And upon the principle above mentioned, carriers are liable for a loss by an accidental fire or conflagration, while the goods are in their custody (*i*).

(*g*) 8 Vict. c. 20, s. 89, post, App., 182.

(*h*) *Trent and Mersey Navigation Company* v. *Wood*, 4 Doug. 287; *Barclay* v. *Cuculla-y-Gana*, 3 Doug. 389.

(*i*) *Hyde* v. *The Trent and Mersey Navigation Company*, 5 T. R. 389; *Gatcliffe* v. *Bourne*, 4 Bing. N. C. 314, S. C., in error, 8 Scott, 604.

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This was the rule of the common law, which regulated all cases in which there was no special contract between carriers and their employers. The result was, that carriers soon found it necessary for their protection to make special contracts in all cases where goods of more than ordinary value were delivered to their care (*k*).

The legislature (*l*), in more modern times, has also granted a protection to carriers, which, as we shall see hereafter, affords them much more substantial security than they could attain by resorting to special contracts. The usual course taken by carriers to evade the liabilities they were under at common law was, by inserting in the newspapers, distributing in hand-bills, and sticking up in their offices, a notice that the carrier would not be accountable for the loss of any property beyond a certain value, unless insured and paid for accordingly at the time of delivery (*m*). But the mere advertisement by the carrier of the terms and limitations of his responsibility, however public it might have been, had no effect except upon those to whom knowledge of it was directly or constructively brought home; but, when such knowledge was proved, the notice constituted a special and particular contract between the parties.

The most usual evidence to shew this was, by proof that a notice was put up in the office, where goods were received and entered for the purpose of carriage, in so conspicuous a situation, that it must (unless he were guilty of wilful

(*k*) As early as Lord Coke's time, we find this practice recommended. In *Southcote's* case, 4 Rep. 84, Lord Coke observes, "*Nota* reader, it is good policy for him who takes any goods to keep, to take them in special manner, *scil.* to keep them as he keeps his own goods, or to keep them the best he can at the peril of the party; or if they happen to be stolen or purloined, that he shall not answer for them; for he who accepteth them ought to take them in such or the like manner, or otherwise he may be charged by his general acceptance."

(*l*) By stat. 11 Geo. 4 & 1 Will. 4, c. 68, post, p. 448.

(*m*) Smith's Mercantile Law, 169

negligence) have attracted the attention of the plaintiff or his agent. It was, however, decided, that this proof fails where the party who delivers the goods at the office cannot read (*n*); and where the goods were delivered by a porter, who admitted that he had frequently been at the defendants' office, and that he had seen a painted board, but did not suppose that it contained anything material, and in fact had never read it, it was held, that, although the board contained a notice of limitation, the evidence of notice was insufficient (*o*). So, the proof failed where the notice at the office stated the advantages of carriage by the particular wagon in large letters, and the notice of non-responsibility in small characters (*p*), although, at the termini of the carrier's route, notice was given at the offices by means of a board inscribed with large letters. So, where the printed notice was in a situation where the plaintiff was not likely to see it (*q*). So, also, where the goods were not delivered at the office where the notice was exhibited, but were delivered into a cart sent round to receive goods, or at an intermediate stage between the two places, from each of which the carrier conveyed goods to the other, there being no notice at the place of delivery, although notices were suspended at the two termini (*r*).

Another usual mode of proof was by evidence that notice was given by means of printed cards, or by advertisements in the public newspapers; but it was ruled that this was insufficient, unless it be proved that the plaintiff had seen such cards, or read the newspapers (*s*), and even then it is a question for the jury (*t*).

(*n*) *Davis* v. *Willan*, 2 Stark. C. 279.

(*o*) *Kerr* v. *Willan*, 2 Stark. C. 53.

(*p*) *Butler* v. *Heane*, 2 Camp. 415.

(*q*) *Walker* v. *Jackson*, 10 M. & W. 161.

(*r*) *Gouger* v. *Jolly*, 1 Holt, N. P. C. 317.

(*s*) *Clayton* v. *Hunt*, 3 Camp. 27.

(*t*) *Rowley* v. *Horne*, 3 Bing. 2.

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Where it appeared that the plaintiff had been in the habit of sending parcels by the defendant's conveyance, and that two parcels had at different times been lost, and that the plaintiff had acquiesced in those losses, desiring the witness for the future to insure the parcels sent, it was held to be evidence of the plaintiff's knowledge that the defendant had limited his responsibility (*u*). And the defendant may shew, that, when other parcels were delivered to him by the plaintiff, a ticket was delivered with each parcel containing the notice (*x*).

In all cases where the notice could not be brought home to the person interested in the goods, or his agent, directly or constructively, the notice was a mere nullity, and the carrier was responsible according to the general principles of the common law (*y*). But it must be understood, that common carriers could not, by thus giving a notice, exempt themselves from all responsibility, so as to evade altogether the salutary policy of the common law. In the first place, such notice would not exempt the carrier from any losses by the malfeasance, misfeasance, or gross negligence of himself and servants. If, therefore, he converted the goods to a wrong use; if he negligently made a wrong delivery to a person not entitled to them (*z*); or if he were guilty of gross negligence in the carriage or care of them, the loss must be borne by the carrier, notwithstanding his notice: for the terms of it are uniformly construed not to exempt him from such losses (*a*).

It was for some time doubtful whether a carrier was liable for losses occasioned by ordinary negligence in cases

(*u*) *Roskell* v. *Waterhouse*, 2 Stark. C. 461.

(*x*) *Mahew* v. *Eames*, 3 B. & C. 603.

(*y*) Story on Bailments, 358; *Brooke* v. *Pickwick*, 4 Bing. 218,

(*z*) *Duff* v. *Budd*, 3 B. & Bing. 177; *Birkette* v. *Willan*, 2 B. & A. 356.

(*a*) Story on Bailments, 364.

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here he had given the usual notice. The case of *Wyld* v. *Pickford* (*b*) has, however, decided this question in the affirmative. In that case, the action was brought against the defendants, who were common carriers, to recover the value of certain goods lost by them. The plea alleged, that notice had been given to the plaintiff that the defendants would not be responsible for the loss of the goods mentioned in the declaration, unless the same were insured according to their value, and paid for at the time of their delivery to the defendants; and it was averred that no such notice was given to the plaintiff. The Court of Exchequer, after taking time to consider their judgment, said, "What circumstance may make the defendants responsible after such a notice, whether ordinary negligence, or gross negligence, or wilful misfeasance, is a question which it is necessary to determine. Upon reviewing the cases on this subject, the decisions and dicta will not be found altogether uniform, and some uncertainty still remains as to the true ground on which cases are taken out of the operation of these notices. The weight of authority seems to be in favour of the doctrine, that, in order to render a carrier liable after such a notice, it is not necessary to prove a total abandonment of that character, or an act of wilful misconduct, but that it is enough to prove an act of ordinary negligence,—gross negligence, in the sense in which it has been understood in the cases cited; and that the effect of a notice in the form stated in the plea is, that the carrier will not, unless he is paid a premium, be responsible for all events (other than the act of God and the Queen's enemies) by which loss or damage to the owner may arise, against which events he is by common law a sort of insurer; but still he undertakes to carry from one place to another, and for some reward in respect of the carriage, and is

(*b*) 8 M. & W. 443.

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therefore bound to use ordinary care in the custody of the goods, and their conveyance to and their delivery at their place of destination, and in providing proper vehicles for their carriage; and, after such a notice, it may be that the burthen of proof of damage or loss by the want of such care would lie on the plaintiff" (*c*).

The result seems to be, that no substantial protection was afforded to carriers by means of the notices which were usually resorted to. It was generally difficult to prove the fact of notice to the owner of the goods; and the carrier, as we have seen, still remained liable for losses caused by negligence.

It is still usual amongst carriers to give such notices; but the Carriers Act, to which we shall now refer, has rendered such general notices (when given by land carriers (*d*)) of no avail (*e*), although they are still at liberty to make a special contract with reference to each particular transaction relating to the carrying of goods (*f*).

Protection afforded by the Carriers Act, 11 Geo. 4 & 1 Will. 4, c. 68.

III. The preamble of the 11 Geo. 4 & 1 Will. 4, c. 68, (called the Carriers Act), recites, that, "whereas, by reason of the frequent practice of bankers and others, of sending by the public mails, stage-coaches, wagons, vans, and other public conveyances by land, for hire, parcels and packages containing money, bills, notes, jewellery, and other articles of great value in small compass (*g*), much valuable property

(*c*) See also *Hinton* v. *Dibbin*, 2 Q. B. 661.

(*d*) The Carriers Act is only applicable to carriers by land. See sect. 1, supra.

(*e*) See sect. 4, post, 451. Care must, however, be taken to give the notice required by sect. 2, post, 450.

(*f*) Railway companies usually make special contracts when horses and other valuable animals are carried. See *Palmer* v. *The Grand Junction Railway Company*, 4 M. & W. 768. The agreement by carriers to be accountable for the safe carriage of a parcel expressed to be of greater value than 20*l*., requires no stamp, if the value of the carriage be below that value; for the carriage, and not the goods, is the subject of the agreement. *Latham* v. *Rutley*, 1 Ry. & M. 13.

(*g*) The enacting part of sect. 1 goes beyond the preamble and mis-

Protection afforded by the Carriers Act, 11 G. 4 & 1 W. 4, c. 68.

is rendered liable to depredation, and the responsibility of mail contractors, stage-coach proprietors, and common carriers for hire, is greatly increased: and whereas, through the frequent omission by persons sending such parcels and packages to notify the value and nature of the contents thereof, so as to enable such mail-contractors, stage-coach proprietors, and other common carriers, by due diligence, to protect themselves against losses arising from their legal responsibility, and the difficulty of fixing parties with knowledge of notices published by such mail contractors, stage-coach proprietors, and other common carriers, with the intent to limit such responsibility, they have become exposed to great and unavoidable risks, and have thereby sustained heavy losses; be it therefore enacted, that no mail-contractor, stage-coach proprietor, or other common carrier by land for hire, shall be liable for the loss of, or injury to any article or articles, or property, of the descriptions following, (that is to say), gold or silver coin of this realm, or of any foreign state, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewellery, watches, clocks, or time-pieces of any description, trinkets (*h*), bills, notes of the Governor and Company of the Banks of England, Scotland, and Ireland respectively, or of any other bank in Great Britain or Ireland, orders, notes, or securities for payment of money, English or foreign, stamps, maps, writings, title-deeds, paintings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks (*i*), in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials, furs (*k*), or lace, or any

chief here recited; therefore a carrier is liable for the loss of a large looking-glass. *Owen* v. *Burnett*, 2 C. & M. 357.

(*h*) An eye-glass, with a gold chain attached, are not "trinkets." *Davey* v. *Mason*, Car. & Mar. 45.

(*i*) Silk dresses made up for wearing, are not "silks." *Davey* v. *Mason*, Car. & Mar. 45.

(*k*) Hat bodies, made partly of fur

Protection afforded by the Carriers Act, 11 G. 4 & 1 W. 4, c. 68.

of them, contained in any parcel or package, which shall have been delivered, either to be carried for hire, or to accompany the person of any passenger in any mail or stage-coach or other public conveyance, when the value of such article or articles, or property aforesaid, contained in such parcel or package, shall exceed the sum of £10, unless, at the time of the delivery thereof at the office, warehouse, or receiving-house of such mail-contractor, stage-coach proprietor, or other common carrier, or to his, her, or their book-keeper, coachman, or other servant, for the purpose of being carried, or of accompanying the person of any passenger as aforesaid, the value and nature of such article or articles, or property, shall have been declared by the person or persons sending or delivering the same (*l*), and such increased charge as hereinafter mentioned, or an engagement to pay the same, be accepted by the person receiving such parcel or package.

By sect. 2, when any parcel or package, containing any of the articles above specified, shall be so delivered, and its value and contents declared as aforesaid, and such value shall exceed the sum of £10, it shall be lawful for such common carrier, &c., to demand and receive an increased rate of charge, to be notified by some notice affixed in legible characters in some public and conspicuous part of the office, &c., stating the increased rates of charge required to be paid over and above the ordinary rate of carriage, as a compensation for the greater risk, and care to be taken for the safe conveyance of such valuable articles; and all persons sending or delivering parcels or packages containing such valuable articles as aforesaid, at such office, shall be

and partly of wool, are not "furs." *Mayhew* v. *Nelson*, 6 Car. & P. 58.

(*l*) It is not sufficient that the carrier has a conviction in his mind as to the contents of a box, but there must be an express formal declaration of the value made by the consignor, otherwise the carrier is not liable. *Boys* v. *Pink*, 8 Car. & P. 363.

bound by such notice, without further proof of the same having come to their knowledge.

Protection afforded by the Carriers Act 11 G. 4 & 1 W. 4, c. 68.

By sect. 3, when the value shall have been so declared, and the increased rate of charge paid, or an engagement to pay the same shall have been accepted as hereinbefore mentioned, the person receiving such increased rate of charge, or accepting such agreement, shall, if thereto required, sign a receipt for the package or parcel, acknowledging the same to have been insured, which receipt shall not be liable to any stamp duty; and if such receipt shall not be given when required, or such notice as aforesaid shall not have been affixed, the common carrier, &c., shall not have or be entitled to any benefit or advantage under this act, but shall be liable and responsible as at the common law, and be liable to refund the increased rate of charge.

By sect. 4, no public notice or declaration hereafter to be made, shall be deemed or construed to limit or in anywise affect the liability at common law of any such common carriers, &c., for or in respect of any articles or goods to be carried and conveyed by them, but all such common carriers, &c., shall be liable, as at the common law, to answer for the loss of, or any injury to, any articles and goods in respect whereof they may not be entitled to the benefit of this act, any public notice or declaration by them made and given contrary thereto, or in anywise limiting such liability notwithstanding (*m*).

By sect. 5, for the purposes of this act, every office, warehouse, or receiving-house (*n*), which shall be used or appointed by any common carrier, &c., for the receiving of parcels shall be deemed the receiving-house, &c., of such common carrier, &c.; and any one or more of such common

(*m*) See *Hinton* v. *Dibbin*, 2 Q. B. 646, post, 454.

(*n*) As to what constitutes a receiving house, see *Syms* v. *Chaplin*, 5 A. & E. 634.

Protection afforded by the Carriers Act, 11 G. 4 & 1 W. 4, c. 68.

carriers, &c., may be sued, and no action shall abate for want of joining any co-partner, &c.

By sect. 6, no special contract between any common carriers, &c., and other parties shall be affected by the act.

By sect. 7, where any parcel or package shall have been delivered at any such office, and the value and contents declared as aforesaid, and the increased rate of charges been paid, and such parcel or package shall have been lost or damaged, the party entitled to recover damages in respect of such loss or damage shall also be entitled to recover back such increased charges so paid as aforesaid."

By sect. 8, nothing in this act shall be deemed to protect such common carrier, &c., from liability to answer for loss or injury arising from the felonious acts of any servant in his employ, nor to protect any such servant from liability for any loss or injury occasioned by his or their own personal neglect or misconduct (*o*).

By sect. 9, such common carriers, &c., shall not be concluded as to the value of any such parcel or package by the value so declared as aforesaid, but shall be entitled to require from the party suing proof of the actual value, by ordinary legal evidence, and shall be liable to such damages only as shall be so proved as aforesaid, not exceeding the declared value, together with the increased charges.

By sect. 10, that, in all actions brought against such common carriers, for loss, &c. whether the value of such goods shall have been declared or not, the defendants may pay money into court, as in any other action.

The object of the above act is twofold: first, that the carrier receiving the article may be apprised of its nature,

(*o*) See *Hinton* v. *Dibbin*, 2 Q. B. 646, post, 454.

(*p*) Where the evidence for the plaintiff shewed only circumstances of suspicion against the defendant's porter, but the defendant did not call the porter to prove that he did not steal the parcel which was the subject of the action, and the verdict was found for the plaintiff, a new trial was refused: *Boyce* v. *Chapman*, 2 Bing. N. C., 222; 1 Hodges, 338.

Protection afforded by the Carriers Act, 11 G. 4 & 1 W. 4, c. 68.

in order that he may give it a proportionate degree of protection; and secondly, that, as he incurs an additional danger and risk, he should have an increased compensation (*q*). In regard to the general effect of the act, it has been observed, 1st, That it relates solely to carriers by land: 2ndly, That it extends to the particular articles enumerated only in case their aggregate value exceeds 10*l.*: 3rdly, That it exempts the carrier from his common law responsibility as to such goods, (unless the loss arise from the felony of his servants, and which judiciously imposes on the carrier the necessity for great care in hiring such servants), only in the event of his having affixed a public and conspicuous notice in the receiving office, notifying the extra charges for carrying such valuable articles, or in the event of a special contract: 4thly, That, if the notice be duly affixed, although not seen by the consignor or owner, the carrier is not responsible as to the enumerated description of goods, (if the loss do not arise from the felony of his servants), unless the value and nature of the goods be made known, and the increased or insurance rate of charge for carriage, or an agreement to pay it, be accepted by the carrier; but that the refusal to give on demand a receipt for the goods and extra charge deprives him of the protection of the act: 5thly, That, as to all goods not specifically mentioned in the act, and as to goods of the description therein mentioned, when the value of the latter is not above 10*l.*, the common-law liability continues, although such notice be given, or any public notice or declaration be made or given, by the carrier attempting to vary such liability: 6thly, That the act does not preclude the parties from entering into a special contract as to the conveyance of goods of any description or value; and that, under the act, the merely giving the public notice, though known to the

(*q*) *Owen* v. *Burnett*, 2 Cr. & M. 353.

Protection afforded by the Carriers Act, 11 G. 4 & 1 W. 4, c. 68.

consignor or owner of the goods, cannot be deemed to constitute a special contract for this purpose: and 7thly, That it seems, that if the loss or injury be occasioned by the personal neglect or misconduct of the coachman, guard, bookkeeper, or other servant of the carrier, in a case in which the carrier himself is not responsible, such coachman, &c., may be sued by the owner of the goods for the consequent damage (*r*).

The cases on the construction of the Carriers Act are not numerous (*s*): but, a late decision, which settles a point of considerable importance to common carriers, demands attention. After the statute was passed, much doubt and uncertainty existed as to whether carriers were liable for losses arising from *gross negligence*, in cases where goods mentioned in the statute, and above the value of 10*l.*, had been delivered to them without the declaration, as to their value, required by sect. 1. This question was decided in the case of *Hinton* v. *Dibbin* (*t*), where the point raised on demurrer was, whether a common carrier was liable in such a case, the goods having been lost by the gross negligence of his servants; and it was determined that the carrier was not liable. It was contended for the plaintiff, that the carrier would not have been protected by a notice given by him before the act (*u*); and that the legislature did not intend to protect him where the notice under the old law did not. On the other hand, it was said, that the preamble of the act pointed out, that, by the omission of notice, when valuable goods were delivered to carriers, they were prevented from using due diligence to protect themselves; and it was suggested, that parcels, when it was known to the carriers that they were of great value, would perhaps be sent by other hands than those usually employed.

(*r*) Chitty, jun., on Contracts, 2nd ed., 392.

(*s*) See these cases cited in the notes, ante, 449, and following pages.

(*t*) 2 Q. B. 646.

(*u*) See ante, 446.

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The Court, in delivering judgment, having first adverted to the state of the law at the time of the passing of the act, observe—"The result of these preliminary remarks is, that, supposing (as the title of the act imports,) protection to carriers to have been the object of the legislature, there was a good deal of doubt and uncertainty, if not of hardship, to be removed by the act, and that there is no reason, à priori, why a more limited construction should be put upon it than the language itself requires. The title to the act (which is not to be disregarded in putting a construction upon it) is, 'for the more effectual protection of mail contractors, and other common carriers for hire, against the loss of or injury to parcels or packages delivered to them for conveyance or custody, the value and contents of which shall not be declared to them by the owners thereof.' The protection, it is to be noticed, is absolute and without reserve in the case supposed of not notifying the contents. The preamble (in substance) first recites, that, by reason of the frequent practice of bankers and others sending by public conveyances by land for hire, parcels and packages containing articles of great value in small compass, much valuable property is rendered liable to depredation, and the responsibility of such common carriers (as in the act before-mentioned) is greatly increased; and further, that, through the frequent omission by persons sending such parcels and packages to notify the value and nature of the contents, so as to enable such carriers to protect themselves against losses, 'and the difficulty of fixing parties with knowledge of notices,' published to limit their responsibility, they have sustained heavy losses. The grievance, therefore, first mentioned, is the sending packages of value without communicating the contents, and not merely the difficulty of proving knowledge of notices by owners of goods. It is then enacted, that no such common carrier shall be liable for the loss of or injury to any property therein specified (including

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silks) above the value of 10*l.*, unless at the time of the delivery thereof at the office, warehouse, or receiving-house of such carrier, or to his servant, for the purpose of being carried, the value and nature of such property shall have been declared, and such increased charge as thereinafter mentioned, or an engagement to pay the same, be accepted by the person receiving such property. By the first section, therefore, thus briefly abstracted, the exemption of the carrier from liability is absolute and complete, unless the preliminary thereby made indispensable is complied with by the owner of the goods. 'The increased charge' is, by the 2nd section, declared to be what the carrier is entitled to receive over and above the ordinary rate of carriage for the conveyance of the species of property before enumerated, when above 10*l.*; such increased rate of charge to be notified by some notice to be affixed in some conspicuous part of the office, warehouse, or receiving-house, where goods are received for carriage. By sect. 4 it is provided, that no public notice or declaration shall exempt any carrier from his liability at common law, for the loss of or injury to any articles other than those in the 1st section enumerated; but that, as to such other articles, his liability, as at common law, shall remain, notwithstanding such notice. From which exception, as to the liability of the carrier in respect of goods not enumerated, it seems impliedly to follow, that, as to those which are, protection is afforded to him in the manner above set forth. By sect. 8 it is enacted, that nothing in this act shall be deemed to protect such carrier from the felonious acts of any servant in his employ, nor to protect such servant from liability for any loss or injury by his own personal neglect or misconduct. The former branch of the clause is, to say no more, at least consistent with the supposition that for conduct short of felony the carrier is no longer liable; whereas it is obvious, that, before the passing of the act, the carrier would have been liable for acts of the servant not amount-

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ing or approaching to felony—negligence. The latter branch seems to have been introduced ex abundanti cautelâ merely, seeing that there is nothing in any part of the act to vary the liability of the servant to the master, for any misconduct of the former. Upon the whole, the language of the first section seems to us to be perfectly clear and unambiguous, without exception or restriction, and that none can fairly be implied from any other part of the act. By holding the carrier exempt from liability as to the enumerated articles, unless the owner shall declare their nature, and pay for them in the manner prescribed, we not only further the object avowed in the title and preamble of the act, but give it the effect of removing doubts and difficulties which (as we have seen) it is admitted did exist, as to the liability of a carrier for the loss of goods, who has sought to limit that liability by the publication of a notice in the usual form. It remains only to advert to the case of *Owen* v. *Burnett* (2 C. & M. 353), upon which much reliance was placed in the course of the argument, not for the sake of the decision, but the language of two of the learned judges, who are supposed to have intimated an opinion, that, although the article damaged was amongst those enumerated in the act, the carrier would still have been liable for the damage, if guilty 'of gross negligence.' *Vaughan*, B., in giving judgment for the defendant, is reported to have said, 'if gross negligence were made out it would be different.' *Bayley*, B., the other judge referred to, does not in terms so express himself, nor is what he says necessarily equivalent; and we have before taken occasion to observe upon the manner in which in this same case he speaks of 'gross negligence.' But supposing it to be so, the observation is wholly extra-judicial, and unnecessary for the decision of the case. That decision is in favour of these defendants. For it was expressly found by the jury that the loss was occasioned by the negligence of the carrier alone, and yet the judgment was in his favour. Moreover, in the

same case, the Court showed a disinclination to limit the operation of the statute; for, whereas in the preamble mention is made of 'valuable packages in small compass,' and thence an argument was urged that to such only should the act be applicable, the Court held the contrary, and that it did apply to a package which is stated in the case to have been 'of a considerable size.' In no other case has the question now before us been even noticed. We are therefore unfettered by any authority in putting that construction upon the statute which we think it requires, and our judgment must be for the defendants."

It must, however, be remarked that if a carrier is guilty of malfeasance, as distinguished from gross negligence, conduct whereby (in the language of *Bayley*, J., in *Garnett* v. *Willan* (*y*) "he divests himself wilfully of the charge of the parcel entrusted to his care," and thereby divests himself of the character of a carrier, he is liable for the loss or damage of the goods, although the value may not have been declared under the provision of sect. 1 of the Carriers Act. Cases of considerable nicety may probably arise in the application of the exception now suggested, but nothing which fell from the Court in *Hinton* v. *Dibbin* tends to shew that carriers are not liable in such cases.

The rights and liabilities of the company as carriers of goods.

IV. With respect to the duties of carriers of goods, it is laid down, that it is the duty of a common carrier to receive and carry all goods offered for carriage. This is the result of his public employment as a carrier; and, according to the custom of the realm, if he will not carry goods for a reasonable compensation, he will be liable to an action, unless there is a reasonable ground for the refusal. If a carrier refuses to take charge of goods, because his coach is full (*z*),

(*y*) 5 B. & Ad. 57.

(*z*) *Lovett* v. *Hobbs*, 2 Shower, 128. In *Ex parte Robins*, 7 Dow, 566, a mandamus was refused to compel a railway company to carry the goods of a particular carrier, on the ground, that the general law of the land might be enforced.

or because the goods are of a nature, which will at the time expose them to extraordinary danger (*a*), or to a popular rage (*b*), or because the goods are not of a sort which he is accustomed to carry, or because he has no convenient means of carrying such goods with security (*c*), or because they are brought at an unseasonable time (*d*); these will furnish reasonable grounds for his refusal, and will, if true, be a sufficient legal defence to a suit for the non-carriage of the goods (*e*).

Another duty of carriers is, to take the utmost care of goods from the moment of receiving them; to obey the directions of the owner in respect to them; to carry them safely to the proper place of destination; and to make a right delivery of them there, according to the usage of trade, or the course of business (*f*).

A question frequently arises in practice, whether carriers, who have received a parcel to be taken to a point beyond that to which their own means of conveyance extend, are liable as carriers for losses beyond that point, or are to be considered as agents for the purpose of carrying to the end of their tract, and employing fresh agents at its termination to complete the journey? The question seems

(*a*) By 8 Vict. c. 20, s. 105, post, App., 185, railway companies cannot be required to carry upon the railway any aquafortis, oil of vitriol, gunpowder, lucifer-matches, or any other goods which in the judgment of the company may be of a dangerous nature; and parties sending such goods without giving notice to the company are liable to be fined. The company may also refuse to take any parcel that they may suspect, or require it to be opened.

(*b*) *Edwards* v. *Sherratt*, 1 East, 604.

(*c*) In Bac. Abr., tit. Carrier (B), it is said, "If a common carrier, who is offered his hire, *and who hath convenience*, refuses to carry goods, he is liable to an action," &c. See also *Jackson* v. *Rogers*, 2 Shower, 327; and judgment of *Holroyd*, J., in *Batson* v. *Donovan*, 4 B. & Ald. 32.

(*d*) *Lane* v. *Cotton*, 1 Lord Raym. 652.

(*e*) Story on Bailments, 328.

(*f*) *Hyde* v. *The Trent and Mersey Navigation Company*, 5 T. R. 389.

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to be for the jury; but the inclination of the Courts is to look on them as carriers throughout (*g*).

Another point of great practical importance is, at what time the carrier is bound to make a delivery of the goods? The general answer is, that he is bound to deliver the goods within a reasonable time (*h*); and that reasonable time must depend upon the circumstances of each particular case. If the party sending the goods stipulate that the carrier shall forward them the same evening, a special contract is created, and the carrier may be sued for damages for a breach of it (*i*).

As to the general rights of carriers, it is to be observed, that, in virtue of the delivery of the goods, they acquire a special property in them, and may maintain an action against

(*g*) Smith's Mercantile Law, 264; *Muschamp* v. *Lancaster and Preston Railway Company*, 8 M. & W. 421. In this case, *Rolfe*, B., says, "I think the construction we are putting on the agreement is not only consistent with law, but is the only one consistent with common sense and the convenience of mankind. What I told the jury was only this, that if a party brings a parcel to a railway station—which, in this respect, is just the same as a coach-office, knowing at the time that the company only carry to a particular place, and if the railway company receive and book it to another place, to which it is directed, primâ facie, they undertake to carry it to that other place. That was my view at the trial, and nothing has occurred to alter my opinion. As to the case which has been put, of a passenger injured on the line of railway beyond that where he was originally booked, I suppose it is put as a reductio ad absurdum; but I do not see the absurdity If I book my place at Euston Square, and pay to be carried to York, and am injured by the negligence of somebody between Euston Square and York, I do not know why I am not to have my remedy against the party who so contracted to carry me to York. But at all events, in the case of a parcel, any other construction would open the door to incalculable inconveniences. You book a parcel, and on its being lost, you are told that the carrier is responsible only for one portion of the line of road. What would be the answer of the owner of the goods?—'I know that I booked the parcel at the Golden Cross for Liverpool, and my contract with the carrier was to take it to Liverpool.' All convenience is one way, and there is no authority the other way."

(*h*) *Raphael* v. *Pickford*, 5 Man. & G. 551; 2 Dowl., N. S., 916.

(*i*) See *Pickford* v. *The Grand Junction Railway Company*, 12 M. & W. 766, where the defendants were sued for not forwarding certain crates of pork on the evening of their delivery.

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any person who takes the goods out of their possession, or does any injury to them (*k*). This right arises from their general interest in conveying the goods, and their responsibility for any loss or injury to them during their transit.

A carrier is, in all cases, entitled at common law to demand the price or hire of carriage before he receives the goods; and, if it is not paid, he may refuse to take charge of them. But, it is not necessary, in order to support an action for refusing to carry, that the satisfaction should have been tendered, in the strict sense of that term as applied to antecedent debts. It is sufficient, if the consignor was ready and willing to deal for ready money, and notifies that readiness and willingness to the carrier (*l*).

We have already seen, that a railway company, in addition to the remedies given by the common law, have several special powers reserved to them, to entitle them to ascertain and recover the amount of tolls due to them. Thus, the tolls must be paid as the company may direct (*m*). On default of payment of tolls a right of general lien is given, in addition to the remedy by an action at law (*n*). An account in writing of the lading of carriages must be given on pain of a penalty (*o*). Disputes concerning the amount of tolls may be settled by a justice (*p*). Lastly, in case of difference between the servants of the company and the owner, or person having charge, of any carriage passing on the railway, or of any goods conveyed by such carriage, respecting the quantity or nature of such goods, the servants of the company may examine the goods (*q*).

(*k*) 2 Wms. Saund. 47 (*e*).

(*l*) *Pickford* v. *The Grand Junction Railway Company*, 8 M. & W. 372; 2 Railway Cases, 592.

(*m*) Ante, 441; 8 Vict. c. 20, s. 96, post, App., 184.

(*n*) Id., s. 97, post, App., 184. The word "toll" includes all charges made by the company as carriers. See Interpretation clause, post, App., 157.

(*o*) Id., ss. 98, 99, post, App., 184.

(*p*) Id., s. 100, post, App., 184.

(*q*) Id., ss. 101, 102, post, App., 185.

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As to the termination of the carrier's risk, it may be observed, that the material consideration is, whether the owner of the goods has taken any exclusive possession of them, or has terminated the custody of the carrier by an act or direction, which does not flow from the duty of the carrier. So long as the carrier retains the possession of the goods, or is to perform any further duty, either by custom or contract, as carrier, he is responsible for their safety. But when the transit is ended, and the delivery is either completed or waived by the owner, the responsibility of the carrier ceases (*r*).

The rights and abilities of the ompany as carers of passengers.

V. It is now proposed to consider the liabilities of carriers in respect of passengers: first, as to their luggage; secondly, as to their persons. Passengers by railways are accustomed as of right to take a certain specified quantity of luggage, for which no charge in addition to the fare is made. The quantity of luggage thus allowed is in some of the early special acts particularly specified; and in all the special acts passed during and subsequent to the session 8 & 9 Vict., the following clause as to passengers' luggage was inserted, viz., That every passenger travelling upon the railway might take with him his ordinary luggage, not exceeding a weight particularly specified, without any charge being made for the carriage thereof. The 7 & 8 Vict. c. 85, s. 6, as we have seen (*s*), also contains a provision, obliging all railway companies to permit third class passengers to take a limited quantity of luggage (*t*).

(*r*) Story on Bailments, 345.

(*s*) Ante, 411.

(*t*) The weight of luggage allowed to passengers in the special acts passed 8 & 9 Vict., varies, in the case of first-class passengers, from 100 lbs. to 150 lbs.; in the case of second-class passengers, from 60lbs. to 100lbs.; and in the case of third-class passengers, from 40 lbs. to 100 lbs. In six instances, the luggage allowed to passengers is limited in dimension as well as in weight; and in four acts it is provided, that passengers' luggage shall be conveyed at the risk of the company, upon the

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The doctrine seems now to be firmly established (*u*), that the responsibility of carriers of passengers with their luggage, stands, as to the luggage, upon the ordinary footing of common carriers (*x*). The observations already made with reference to the liabilities of common carriers, in respect of goods carried by them, are therefore applicable in considering the extent of the liability of railway companies for the loss or injury of the luggage of passengers carried on the railway. It follows, that a general notice limiting the liability of the company is of no avail; but the company are entitled to all the protection afforded by the Carriers Act; and special contracts may be made (*y*).

With regard, however, to the persons of passengers, the carriers of passengers are not, like carriers of goods, insurers against all injuries except of the act of God or by public enemies, and their undertaking is not an undertaking absolutely, to convey safely. The rule appears to be, that passenger carriers are liable to carry safely those whom they take

payment of a sum not exceeding twopence for each parcel. Biggs' Collection of Special Acts, 1845 (Introd. xxviii). In some of the early Special Railway Acts, the company are exempted from liability in respect of certain descriptions of passengers' luggage. See *Elwell* v. *The Grand Junction Railway Company*, 5 M. & W. 669.

(*u*) In Story on Bailments, 324, it is said, "It has been a matter of some controversy, in what character the proprietors of stage-coaches and steam-boats, and rail-cars, are to be regarded. The more important question has been in regard to their liability for the baggage of passengers, whether it is that of common carriers, or only that of private persons engaging ordinarily for hire, that is, for due and reasonable skill and diligence in their undertaking. The general tendency of the authorities, however, has at all times been to the point, that, as to the baggage of the passengers, the proprietors are common carriers. And the doctrine seems now firmly established, both in England and America, that the responsibility of coach proprietors carrying passengers with their baggage, stands, as to their baggage, upon the ordinary footing of common carriers. Mr. Bell has deduced this as the true modern doctrine on the subject."

(*x*) *Robinson* v. *Dunmore*, 2 Bos. & Pul. 416; *Clark* v. *Gray*, 6 East, 564, 4 Esp. 177; *Brook* v. *Pickwick*, 4 Bing. 218.

(*y*) See ante, 448.

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"into their coaches, as far as human care and foresight will go; consequently they are liable for the result of any accident which may arise through negligence. Thus it has been laid down, that every stage-coach proprietor impliedly undertakes that his coach shall be sufficiently secure to perform the intended journey, and he ought to examine its sufficiency previous to such journey; and if he do not, and by the insecurity of the coach a passenger is injured, an action is maintainable against the coach proprietor for negligence, though the coach had been examined previous to the journey before the accident, and though it had been repaired at the coachmaker's only three or four days before (*y*). So, if an accident happens from a defect in the original construction of a coach, the proprietor is liable, although the defect be out of sight, and not discoverable upon ordinary examination (*z*).

In an action against a coach proprietor for negligence, it appeared that the plaintiff became an outside passenger for hire; that there was luggage on the roof of the coach, and no iron railing between the luggage and the passengers; and that the plaintiff, being seated with her back to the luggage, was, by a sudden jolt, thrown from the coach, and her leg was thereby broken. The learned judge directed the jury to find for the plaintiff, if they were of opinion that the injury sustained was occasioned by the negligence of the defendant. The jury found for the plaintiff, and stated that they so found on account of the improper construction of the coach, and of the luggage being on the seat; and it was held, that the case was properly submitted to the jury, and that the facts found specially by them amounted to negligence in the defendant (*a*). So, it has been decided, that if

(*y*) *Bremner* v. *Williams*, 1 Car. & P. 414, per Best, J.

(*z*) *Sharp* v. *Gray*, 9 Bing. 457.

(*a*) *Curtis* v. *Drinkwater*, 2 B. & Adol. 169.

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through the default of a coach proprietor in neglecting to provide proper means of conveyance, a passenger be placed in so perilous a situation as to render it prudent for him to leap from the coach, whereby his leg is broken, the proprietor will be responsible in damages, although the coach was not actually overturned (*d*).

And it has been decided by a learned judge in a late case, that, if an accident happens to a passenger on a railway in consequence of the carriage running off the rails, the burthen of proof to disprove negligence, lies on the railway company, it having been shewn that the exclusive management both of the machinery and railway was in their hands (*e*).

It is also to be observed, that the responsibilities of railway companies as carriers of passengers have been greatly extended by the statute 9 & 10 Vict. c. 93 (*f*). Sect. 1 of this statute enacts, that, wheresoever the death of a person shall be caused by wrongful act, neglect, or default, such as would (if death had not ensued) have entitled the party injured to recover damages in respect thereof, in every such case the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such

(*d*) *Jones* v. *Boyce*, 1 Stark. R. 493.

(*e*) *Carpue* v. *The London and Brighton Railway Company*, 5 Q. B. 747; 3 Railway Cases, 692. The declaration, which was in case, charged, that the company were owners of the railway, and of carriages used by them for the conveyance of passengers along it, for reward; that, they being owners of the railway and carriages, plaintiff, at their request, became a passenger in one of the carriages, for reward to them, and they received him as such passenger, and it became their duty to use due care and skill in conveying him. The breach alleged was, that they did not use due care and skill in conveying him, but took so little care, and so negligently and unskilfully conducted themselves in carrying him, and managing the carriage in which he was passenger, the train to which it was attached, and the engine whereby it was drawn, upon the company's railway, that the carriage was thrown off the rails, and plaintiff was injured.

(*f*) See this statute, post, App. 222.

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circumstances as amount in law to felony. Actions must be brought, in the name of the executor or administrator of the deceased person, for the benefit of such relations of the deceased as are specified in the act; and the jury may give such damages as they may think proportioned to the injury resulting from such death, to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered shall be divided amongst the parties before mentioned in the act, in such shares as the jury by their verdict shall find and direct (*h*). Only one action may be brought, and it must be commenced within twelve calendar months after the death of the deceased person (*i*); and the plaintiff must, with the declaration, deliver a full particular of the person on whose behalf the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered (*k*).

But carriers of passengers are not compellable to carry a passenger unless there be room in the carriage (*l*); and, as we have seen, the bye-laws, issued under the authority of the Commissioners of Railways, provide that passengers at the road stations are only booked conditionally upon there being room (*m*). The bye-laws also contain certain regulations which provide for the payment of the fares, and good behaviour of passengers conveyed on the railway (*n*); and, by the Railways Clauses Consolidation Act, it is enacted, that

(*h*) 9 & 10 Vict. c. 93, s. 2, post, App., 223. The liabilities thus imposed appear to be of a very weighty description. If a deceased person should leave children and grand-children, and also a father, mother, and wife, the damages which a jury may think to be proportioned to the injury resulting from the death to each of these persons, might, under certain circumstances, amount to a very large sum of money.

(*i*) Id., s. 3, post, App. 223.

(*k*) Id., s. 4, post, App. 223.

(*l*) *Lovett* v. *Hobbs*, 2 Show. 428.

(*m*) See ante, 95.

(*n*) It has been decided in the American courts, that, although steamboat proprietors, holding themselves out as common carriers, are bound to receive passengers on board under ordinary circumstances, they may refuse to receive them, if there be a reasonable objection. Thus, they are not bound to admit passengers on

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if any person travel, or attempt to travel, in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare, and with intent to avoid payment thereof; or if any person, having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof; or if any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage—every such person, for every such offence, forfeits to the company a sum not exceeding forty shillings; and if any person be discovered, either in or after committing or attempting to commit any such offence as in the preceding enactment mentioned, all officers and servants and other persons on behalf of the company, or such other company or party as aforesaid, and all constables, gaolers, and peace officers, may lawfully apprehend and detain such person until he can conveniently be taken before some justice, or until he be otherwise discharged by due course of law (*o*).

Lastly, in connection with the subject of this chapter, it may here be observed, that, if through negligence sparks fly from the engines used on a railway, whereby buildings or other adjoining property are destroyed by fire, the company are liable to be sued for damages thus occasioned (*p*).

board who refuse to obey the reasonable regulations of the boat, or who are guilty of gross or vulgar habits of conduct, or who make disturbances on board; or whose characters are doubtful, or dissolute, or suspicious; and, à fortiori, whose characters are unequivocally bad. And, as passengers are bound to obey the orders and regulations of the proprietors, unless they are oppressive and grossly unreasonable, whoever goes on board under ordinary circumstances impliedly contracts to obey such regulations, and may justly be refused a passage if he wilfully resists or violates them. Story on Bailments, 375, citing *Jencks* v. *Coleman*, 2 Sumner's Rep. 242.

(*o*) 8 Vict. c. 20, ss. 103, 104, post, App. 185.

(*p*) As to what is proof of negligence in such a case, see *Piggott* v. *The Eastern Counties Railway Co.*, 10 Jurist, 571.

CHAPTER III.

ON THE ASSESSMENT OF RAILWAYS TO THE POOR-RATE, WITH OBSERVATIONS ON THE DECIDED CASES.

The principles of law applicable to the rating of railways.

IT is now well understood, that railway companies are liable to be rated to the relief of the poor; but much difficulty has been hitherto experienced in carrying the law into effect. The intricacy of some of the points which arise in considering this important subject, and the present unsettled state of the question, are circumstances which seem on this occasion to invite an investigation of the general principles of the law which are applicable to the assessment of the poor-rate.

And, first, a railway company are liable to be rated to the poor-rate, as being the occupiers of land within the meaning of the stat. 43 Eliz. c. 2. That statute, sect. 1, enacts, that competent sums shall be levied in each parish for the relief of the poor, by "taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods in the said parish," to be gathered out of the parish, according to the ability of the parish.

And the stat. 6 & 7 W. 4, c. 96, enacts, "that no rate for the relief of the poor in England and Wales shall be allowed by any justices, or be of any force, which shall not be made upon an estimate of the net annual value of the several hereditaments rated thereunto, that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, and tithe commutation rent-charge, if any, and deducting therefrom the probable average annual cost of the repairs, insur-

ance, and other expenses, if any, necessary to maintain them in a state to command such rent."

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And, by the 3 & 4 Vict. c. 89 (*a*), it is enacted, "that it shall not be lawful for the overseers of any parish, township, or village, to tax any inhabitant thereof, as such inhabitant, in respect of his ability, derived from the profits of stock-in-trade or any other property, for or towards the relief of the poor: Provided always, that nothing in this act contained shall in anywise affect the liability of any parson or vicar, or of any occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods, to be taxed under the provisions of the said acts, for and towards the relief of the poor."

Thus it appears, 1st, that a railway company are liable to be rated to the relief of the poor, as being occupiers of land; 2ndly, that the company ought to be assessed upon the estimate of the net annual value of the hereditament, *i. e.* the land on which the railway and its appurtenances are constructed; 3rdly, that they are not liable to be assessed in respect of their ability, derived from the profits of stock-in-trade, or any other property except land.

The principles of the law applicable to the rating of railway companies are, therefore, clear and distinct enough; but it is in the practical application of those principles that great difficulties have been experienced, and considerable litigation has been the result. There seems to be, however, some points connected with the subject which appear to be clearly settled, and these we shall first notice.

And, first, it is to be observed that the station-houses, warehouses, offices, repairing works, and any other buildings used for the purposes of the railway, are rateable in the respective parishes in which they are situate, and the assessment should be made upon their net annual value,

(*a*) Continued by 9 & 10 Vict. c. 50.

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ascertained according to the provisions of the 6 & 7 W. 4, c. 96, commonly called the Parochial Assessment Act.

It may also be taken to be a well-established principle of law, that the railway is rateable in the parish where the profits are earned; and it makes no difference that the earnings are received elsewhere. This is well explained by a learned judge(*b*): "A farmer is rateable in the place where he grows his corn, and not where he sells it." It therefore makes no difference that a portion of the fares and tolls which are earned in any parish are received at any other place. And it is the amount of the traffic over the portion of the railway in each parish, taken in connection with the proper deductions, which ought to regulate the amount of the rate. If the portion in a parish is more productive than other portions in other parishes, either because there is more traffic, or because larger tolls are due upon it, or because the yearly outgoings and expenses there are less, it ought to be assessed at a higher proportionate value(*c*).

Another principle of the law is, that the amount of the

(*b*) *R.* v. *Inhabitants of Barnes*, 1 B. & Ad. 116.

(*c*) See *R.* v. *The Inhabitants of Kingswindford*, (7 B. & C. 242); which, although a decision on the subject of rating canals, appears to be precisely applicable to the case of railways. There, it is said, "The company ought to be rated in each particular parish, in proportion to the profit which they derive from the land there used by them for the purpose of the canal. If a canal runs through six different parishes, and there is the same traffic through the whole line of the canal, every part of the canal will earn an equal proportion of the tolls; but it may happen, that, in that part of the canal situate in one parish, there may be double or treble the traffic which there is in any other of the six. Why are the other parishes to have any part of the tolls earned in that parish? The land in those parishes contributes nothing towards earning the sum derived in the other parish from the use of the land there. The true principle is this: a canal company is to contribute to the relief of the poor, in each parish through which the canal passes, in proportion to the profit which they derive from the use of their land in that parish. If the profit arising from a given quantity of land vary in different parishes, the rate must vary in the same proportion." This point was also noticed in *R.* v. *The London and South Western Railway Company*, (see post, 486), in the following language:—"Another question was, indeed, raised as to the mode of measuring the rate, on which-

assessment to the rate does not depend upon the amount of the capital originally expended in constructing the portion of the railway which is the subject of the assessment, except, indeed, so far as such expenditure has increased the annual value of that portion of the railway—for instance, the line of tunnel at Box Hill, on the Great Western Railway, or the portion of the London and North Western Railway constructed across Chat Moss, must be rated with reference, not to its original cost, but with reference to the amount of its yearly earnings and outgoings, in the same proportions as any other portions of the railway, less costly in their construction.

Having thus pointed out such rules or principles of law as appear to be well established, it is now proposed to make a few remarks on the difficulties which have been stated to be attendant on the assessment of the poor-rate on railways.

It is well known that railway companies are usually common carriers on their own lines of railway, and, as it has been shewn, they are liable to be rated as occupiers of the land on which the railway and its appurtenances are constructed; but they are not liable to be rated in respect of the profits derived from their stock-in-trade, or any other personal property (*d*); and thus, therefore, arises the prac-

ever of the two principles it was to be calculated; whether, namely, it was to be measured according to the proportion which the mileage of the railway in the respondent parish bears to the whole length of the way, assuming the profits to arise equally through the whole, or according to the actual earnings in this parish. This question, however, was not much argued, it being conceded ultimately, that the latter was the proper mode."

(*d*) Thus, it is said, in *R.* v. *The Grand Junction Railway Company*, (4 Q. B. 38, post, 505), "The profits of trade, as such, cannot be brought into the rate; but if the ability to carry on a gainful trade upon the land adds to the value of the land, that value cannot be excluded, merely because it is referable to the trade." Again, in another part of the same judgment, "The two propositions are equally true—that the rate is not to be imposed in respect of the profits of trade, and that it is to be imposed in respect of the value of the occupation," (Id., post, 507). And in *R.* v. *The*

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tical difficulty which occurs to distinguish accurately between that which is properly referable to the trade alone, and that increase of value which the carrying on of the trade upon the land gives to the occupation of it (*e*).

Observations on the decided cases.

It has been already stated, that considerable litigation has taken place on the subject of railway rating, and, as no less than three cases have been sent to the Court of Queen's Bench for decision, it may be supposed that they afford a clear and distinct rule for rating railways, which may be applied in all future cases. A perusal of the cases will, however, shew that this desirable result has not been attained; and the reason is obvious,—for the Court of Queen's Bench, according to its custom, studiously applied and confined the judgments to the facts of each case as they were stated by the quarter sessions; and it being also a well-established rule, that the quantum of the rate is a question solely for the sessions to determine, no opinion could be elicited from the learned judges, as to the propriety and sufficiency of the various allowances and deductions which had been made by the sessions out of the gross receipts of the company—that being the process by which the sessions ascertained the rateable value of the railways. This disinclination of the Court to interfere with mere questions of fact, was pointedly put by the Court in one of the cases, in the following language: "We are very unwilling to withhold our aid in settling questions for the sessions of such novelty and difficulty as the railway rating must often bring before them; but we ought not to go beyond our province, and so perhaps mis-

Great Western Railway Company, (6 Q. B. 203, post, 510), the Court say, "We are then to see whether these deductions include all such as ought to be made on an ordinary occupation, exclusive of trade, and also all such matters as are distinctly referable to the trade only, and do not enhance the value of the occupation."

(*e*) *R.* v. *The Great Western Railway Co.*, 6 Q. B. 201, post, 510

lead them. The question involves no principle of law, and we decline to answer it (*f*)."

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And this pertinent remark is applied to a question of momentous interest to the contending parties, *i. e.*, whether tenant's profits ought to be ascertained by a per-centage calculated upon the original value of the moveable stock belonging to the company, or by a per-centage on their gross receipts.

It is therefore believed, that a careful perusal of the judgments delivered in the cases referred to (*g*) will lead to the conclusion, that, although the Court has with great perspicuity answered the questions of law submitted, the judges declined to give any opinion upon some of the really main points in dispute; if therefore disappointment be felt because specific rules applicable to railway rating are not distinctly laid down, it will arise from the peculiar mode in which the cases were stated, and from the circumstances already adverted to.

R. v. The London and South-western Railway Co.

In the London and South-western case (*h*), which was first submitted to the Court of Queen's Bench, the general question, as to the proper mode of rating railways, was not much discussed. The great point suggested in that case, on behalf of the railway company, was, that the tolls alone (as distinguished from fares) which the company were authorised to take from the persons who used the railway with their own carriages, formed the basis on which the rate was to be calculated; and the case found as a fact, that, if the company were wrong on this point, then a certain sum (70,000*l.* per annum for the whole railway) was the rent which a tenant would be willing to give for the occupation of the rail-

(*f*) *Reg.* v. *The Great Western Railway Co.*, 6 Q. B. 207, post, 510.

(*g*) These cases and judgments are stated in detail, post, 484.

(*h*) 1 Q. B. 558, post, 484.

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way, with all its attendant advantages, under the provisions of the Parochial Assessment Act. The sums were therefore agreed upon between the parties, and it was unnecessary to consider whether the profits of trade, as such, were included in the larger assessment of 70,000*l.* per annum or not (*i*); and, the Court having ruled that the principal point contended for by the company could not be sustained, the purposes for which that case seems to have been raised were answered.

R. v. The Grand Junction Railway Co.

In the Grand Junction case (*k*), the next in order, the same question, as to making the tolls the basis of the rate, was again submitted to the Court, and a distinction in favour of the railway company was attempted to be set up, on the ground, that persons other than the company used the railway as carriers, which was not the state of the facts in the previous case. The Court, however, adhered to their former decision on this point, and said that the two cases were in principle the same.

But another question of great importance was, in the Grand Junction case, submitted to the Court. It appeared that the court of quarter sessions ascertained the rateable value of the railway in the following manner:—The gross receipts of the company were first ascertained, and, the problem being to cut down this gross sum to the net rent which a tenant would give for the railway, various items of deduction, amounting to six in number, were allowed (*l*); and an attempt was thus made to call upon the Court of Queen's

(*i*) It is said by the Court, that the stat. 3 & 4 Vict. c. 80, which, as we have seen, abolished rating in respect of the profits of stock-in-trade, or other personal property, had little or no bearing on the question submitted to them; (see *R.* v. *The London and South Western Railway Co.*, post, 489); and it is remarkable, that, from the peculiar mode in which all these cases were prepared, no discussion whatever took place as to the effect of thisstatute on railway rating.

(*k*) *R.* v. *The Grand Junction Railway Co.*, 4 Q. B. 38, post, 496.

(*l*) See post, 500.

Bench to determine the proper method of finding out the rent, and also to verify the calculations upon which the estimate was founded.

It will be seen, however, that the Court declined to give any opinion upon the sufficiency, in point of amount, of the allowances which were made to represent the profits referable to the trade carried on by the company as carriers upon the railway. Thus, in the judgment, it is said, "The gross yearly receipts of the company as occupiers of, and carriers on, the railway must at least include the proper subject-matter of the rate. They have, therefore, taken a sum agreed to represent them as the first point to start from. They then assume an amount of capital employed in the trade, and deduct from the former sum two per-centages on the latter for the interest of this capital and the profits which ought to be made on it, and a third for the depreciation of stock beyond usual repairs and expenses; 4thly, they deduct from the gross receipts the annual costs of conducting the trade; 5thly, they deduct the annual value of all the land occupied by stations, &c., and elsewhere rated; and, sixthly, a sum per mile for the reproduction of rails, chairs, sleepers, &c. These deductions, taken together, seem to us to include whatever is properly referable to the trade, and distinguishable from the increased value which that trade gives to the land. We do not now speak of the *amounts* allowed under each item, and we decline to give any opinion on this point, which is properly for the sessions; but if these are the proper heads of deduction, then the residue must represent the value of the occupation; and if so, this alone is brought into the rate, and the profits of trade are excluded. Accordingly, the sessions have found, as an inference from the facts, that the residue is the sum which a tenant from year to year might reasonably be expected to give for the railway and corporeal hereditaments now occupied by the company in connexion

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with the railway, exclusive of the stations and other buildings rated separately, such tenant being assumed to have the same and no other power of using the railway,—the same and no other advantages and privileges,—as the company now possess. *If the deductions exhaust that portion of receipts referable to trade*, the inference of the sessions is fair. If the advantages and privileges which the company possess are attributable to their occupation, and would pass with it, their assumption is well founded. We agree with them in both."

R. v. *The Great Western Railway Co.*

We are now arrived at the Great Western case, the last submitted to the Court; and it will be seen that an attempt was again made to induce the Court to lay down a rule as to the amount and propriety of the deductions which were allowed,—the same elaborate process of making deductions from the gross receipts of the railway company, having been adopted by the sessions for the purpose of ascertaining the rateable value of the railway. These deductions were somewhat similar in character, but not in amount, to those made in the Grand Junction case; and the sessions submitted to the judgment of the Court as a distinct question for their determination, "the principle upon which the calculations were founded, and the propriety and sufficiency of the deductions(*k*)." But the Court, although thus pointedly invited to the discussion of the amount and sufficiency of the deductions made by the sessions, declined, as they had done before, to answer the question.

After some introductory remarks, which afford a summary of the principles involved in the two former decisions, the Court observe, "We are now to examine the rate stated in the case,—only, however, as to its principles, and so much of its details as involve principle; beyond that, and

(*k*) 6 Q. B. 184, post, 510.

especially as to the accuracy of calculations, the questions must be for the sessions alone."

Again, it is said, "We are then to see whether these deductions include all such as ought to be made on an ordinary occupation, exclusive of trade, and also all such matters as are distinctly referable to the trade only, and do not enhance the value of the occupation. If so, the principle of the rate is right; *whether sufficient in amount under each head has been allowed, it is not for us to determine.*"

And, lastly, after having discussed in detail the various heads of deduction claimed by the company, but resisted by the parish officers, the judgment proceeds as follows:—"Two more questions are stated; the first, as to the mode of ascertaining the tenant's profits in order to their deduction from the rateable value. The respondents have taken the original value of the plant or moveable stock, and allowed 10*l.* per cent. upon it for these profits, as well as the profits of trade. The appellants say, that the more correct mode would be to ascertain them by a per-centage on the gross receipts, and claim to have 15*l.* per cent. deducted from these on that account. We are very unwilling to withhold our aid in settling questions for the sessions of such novelty and difficulty as the railway rating must often bring before them; but we ought not to go beyond our province, and so, perhaps, mislead them. This question involves no principle of law, and we decline to answer it."

The result, therefore, seems to be, that it still remains for the court of quarter sessions to determine in each case, according to the provisions of the Parochial Assessment Act, the net annual value of the land on which the railway is made. In the foregoing cases, the courts of quarter sessions seem practically to have treated the land as the principal source of profit to the occupiers of the railway, whilst the capital and stock-in-trade,—the latter consisting of the

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locomotive engines and carriages used by the company in their trade as carriers, (all personal property, and consequently not rateable),—are treated as being merely accessary to the occupation of the land (*l*). This result was arrived at by the process of making certain deductions from the gross receipts of the company, until the sessions at last arrived at the net rent which a tenant from year to year would be supposed to be willing to give for the occupation of the railway; and the Court of Queen's Bench has said, "Assuming that you allow sums sufficient in amount by way of deduction, we think the residue properly shews the rateable value of the land."

Now no doubt can be entertained as to the soundness of this doctrine. The rateable value of a farm or of a manufactory may be ascertained by a similar process to that which has been introduced in railway rating, *i. e.*, by taking first the whole of the gross receipts of the farmer or manufacturer, and then by making deductions *sufficient in number and amount* to exhaust every portion of the receipts, except that

(*l*) In the Great Western case (post, 510) the sessions found the gross receipts for each mile in the respondent parish, to be 3680*l.*; the actual expenses incurred by the company per mile to be 1584*l.*, leaving a balance of 2096*l.* profit per mile. Of this sum, the sessions take 1599*l.* as representing the net annual value of the occupation of the land, the remaining 497*l.* being therefore left to represent the profits made by the skill, stock-in-trade, and capital of the company, including their profits as carriers on the line. There seems to be great reason for contending, that it is not correct to attribute so large a proportion of the profits to the occupation of the land, because, as it has been already shewn, the profits of a railway company are realised, partly by the occupation of the land on which the railway is laid, and partly by the possession of valuable personal property, including engines and carriages, which, doubtless, contribute much to earn the profits. It is true, that the profits could not be realised without the use of the land; but the converse of the proposition is equally true, inasmuch as the land would be comparatively unproductive, except by reason of its being used for the passage of carriages, propelled by the wonderful power of steam, applied, it is to be observed, by means of machines, which are clearly not of themselves the subject of assessment to the poor-rate.

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which the farmer or the manufacturer would be willing to pay as rent. At the same time it is extremely improbable that a surveyor would, under any circumstances, adopt this process (which seems ingeniously contrived to run up the rate on railways to the highest point) in proceeding to rate a farmer, much less a manufacturer; and the counsel who argued in support of this mode of ascertaining the rate on railways, justified the proceeding on the ground that the railway company did not point out any other or more satisfactory way of bringing out the net annual value of the railway (*m*).

Objections to the present mode of ascertaining the rate on railways.

After an impartial consideration of the whole question, there seems to be reason to conclude that the present state of the practice relating to railway rating is far from satisfactory. The questions left unanswered by the Court of Queen's Bench must of necessity lead to much litigation at the quarter sessions; and it appears to be extremely desirable that some mode of assessing the rate should be adopted, which will make unnecessary the investigation of accounts, and the laborious process of making deductions from the gross receipts, which are founded upon very unsatisfactory principles, and sometimes upon no principle whatever.

The rateable value of a farm or manufactory is always ascertained without resorting to a series of intricate deductions from the gross receipts of the occupier, and there seems to be no sufficient reason why a similar course should not be adopted in the case of railways (*n*). It is very easy to as-

(*m*) *R.* v. *The Grand Junction Railway Company*, 4 Q. B. 31.

(*n*) For the purpose of testing the accuracy of the present mode of ascertaining the rate on a railway, it may be useful to refer to the mode of rating hereditaments, other than railways; because it has been said, that, if there be one point as to which the spirit of all the decisions is uniform, it is, that the rate must be adjusted on the principle of equality. (*R.* v. *Capel*, 12 A. & E. 412). A rate on a railway must therefore be founded upon this maxim of the law, otherwise it cannot stand the test of an investigation. Now,

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certain the gross receipts per mile of a railway, and also the outgoings per mile, and, by subtracting the latter from the former, the result shews the *net profit* made by the occupation of the land, and by the possession of capital and stock used in trade, with certain incidental advantages, savouring of monopoly, which result from the peculiar nature of railway traffic.

Now it is clear, as it has been already shewn, that the whole of this net profit is not rateable to the relief of the poor,—but only a portion of it; and there seems to be reason for contending, that the courts of quarter sessions, bearing in mind the principles of the law applicable not only to the rating of railways, but also to farms, manufactories, and other like property, may, without much difficulty, ascertain the portion of the net profit which is fairly attributable to the

the profits of a railway company, working their own line, are chiefly derived from two sources—the occupation of a certain quantity of land on which the railway is formed, and the possession of capital in money, and valuable personal property, in the shape of locomotive and other carriages, and various kinds of unfixed machinery: the company also employ a numerous body of clerks and other servants to carry on the business of the railway. So, the profits made by a farmer of land are, in like manner, chiefly derived from the same sources, *i. e.* the occupation of a certain quantity of land, and the possession of a floating capital in money, and of personal property, usually called his stock-in-trade, including cattle and other animals: he also employs numerous labourers in the management of his farm. Again, take the case of a large cotton, or other manufacturer. Here we find an extensive manufactory, a large floating capital, valuable machinery, for the most part unfixed, and not liable to be rated, and a number of workmen employed in carrying on the trade.

In each of these instances, the railway company and the farmer are liable to be rated in respect of the occupation of the land, and the manufacturer in respect of the manufactory; but neither of them is liable to be assessed in respect of his possession of the personal property, *i. e.* his machinery, implements, stock-in-trade, or capital. Nor are the profits of his trade, as such, liable to be taken into account in assessing the rate.

In each of the supposed cases, the law requires that the occupier of the hereditament shall be assessed upon its net annual value, to be ascertained in the manner particularly specified in the Parochial Assessment Act; and the question to be solved is, whether, by the present mode of rating railways, the desired result is attained.

occupation of the land, and they may thus assess the rate on such portion of the net profits as they may consider, under the circumstances of each particular case, to be consistent with justice. Courts of quarter sessions may at first take different views as to the proportion of the net profits which is rateable. Some justices may consider, that if one-half, or even less than one-half, of the net profits be made subject to the rate, the value of the occupation of the land would be amply represented. Other justices may, as in the Great Western case, attach the rate on upwards of three-fourths of the net profits; but it is believed, that, as the principles of the law of rating are clear and distinct, and may be fully discussed before the justices, an uniformity of decision may be ultimately arrived at.

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It may be objected, that the mode of rating thus suggested is not altogether perfect in its operation; but it offers this advantage—that it would be founded on legal principles; and it must not be forgotten, that, if the present mode of ascertaining the rateable value of railways is adhered to, the difficult task remains for the justices to determine whether tenants' profits are to be ascertained by a per-centage calculated upon the value of the railway stock, or by a per-centage on the gross receipts of the company—a question left undetermined by the Court of Queen's Bench in the Great Western case. And when this knotty point is decided by the courts of quarter sessions, another of equal difficulty as well as importance arises, *i. e.* what amount of per-centage ought to be allowed as for tenants' profits?—should it be 5*l.* per cent., or 50*l.* per cent., or some intermediate amount? Upon these questions the courts of quarter sessions must exercise their own discretion, without the expectation of having the slightest assistance afforded them by the judges of the Court of Queen's Bench (*o*).

(*o*) An appeal against a poor-rate, on the ground of inequality of rating, may be made either to the special sessions appointed by the justices, under

Special Provisions for ascertaining the Rate on Railways.

It now only remains to notice some special provisions in the Consolidation Acts, which have reference to the rating of railways. Thus, if the company become possessed of any lands liable to be assessed to the poor-rate, they are from time to time, until the works shall be completed and assessed to the poor-rate, liable to make good the deficiency in the several assessments, by reason of such lands having

stat. 6 & 7 Will. 4, c. 96, s. 6, or, under stat. 43 Eliz. c. 2, to the *next* general quarter sessions, which means the next practicable sessions after the rate was made. At some courts of quarter sessions, it is the practice to allow appeals against rates to be entered and respited, although there had been ample time to give notice of appeal, so as to try at the first sessions. But as the court of quarter sessions may, if they think fit, refuse, under such circumstances, to allow an appeal to be entered and respited, it is always desirable to give the notices for the next practicable sessions, unless some agreement to respite the appeal be made with the respondents. If, however, the sessions allow an appeal to be entered and respited, they cannot afterwards refuse to hear it. *Rex* v. *Justices of Wilts*, 8 B. & C. 380. The stat. 17 Geo. 2, c. 38, s. 4, requires that reasonable notice of appeal shall be given to the parish officers; and, by the rules of the various quarter sessions, the length of this notice (usually fourteen days) is specified. The statute 41 Geo. 3, c. 23, s. 4, requires that the notice of appeal "shall be in writing, and shall be signed by the person or persons giving the same, or his, her, or their attorney, on his, her, or their behalf; and such notice of appeal shall be delivered to, or left at the places of abode of, the churchwardens and overseers of the poor of the parish, township, vill, or place, or any two of them; and the particular causes or grounds of appeal shall be stated and specified in such notice." And, by sect. 6, "if any person or persons shall appeal against any rate or assessment made for the relief of the poor, because any other person or persons is or are rated or assessed in such rate or assessment, or is or are omitted to be rated or assessed therein, or because any other person or persons is or are rated or assessed in any such rate or assessment at any greater or less sum or sums of money than the sum or sums at which he, she, or they ought to be rated or assessed therein, or for any other cause that may require any alteration to be made in such rate or assessment, with respect to any other person or persons, then and in every such case the person or persons so appealing for the causes aforesaid, or any of them, shall give such notice of appeal in writing, as hereinbefore mentioned, not only to the churchwardens or overseers of the poor, or any two or more of them, but also to the other person or persons so interested or concerned in the event of such appeal as aforesaid." Care must be taken to prepare the grounds of appeal in a proper form, as no objections can be taken which are not therein specified. See *R.* v. *Brooke*, 9 B. & C. 915.

Special Provisions for ascertaining the Rate on Railways.

been taken or used for the purposes of the works; and such deficiency must be computed according to the rental at which such lands, with any buildings thereon, were valued or rated at the time of the passing of the special act; and such deficiencies are made payable on demand (*p*).

And the company are required every year to cause an annual account, in abstract, to be prepared, shewing the total receipts and expenditure of all funds levied by virtue of that or the special act, for the year ending 31st December, or some other convenient day in each year, under certain specified heads, and duly audited and certified: and the company must, if required, transmit a copy of the account to the overseers of the poor of the several parishes through which the railway shall pass; and for neglecting to prepare or transmit such account, if required so to do, the company are liable to pay a penalty (*q*).

The following are the cases on railway rating which have been mentioned in the foregoing chapter. A full statement of each case is annexed, accompanied with the judgment of the Court of Queen's Bench.

Reg. v. *The London and South-western Railway Company*, (1 Q. B. 558; 2 Railway Cases, 629; 11 Law Journal, Mag. C., 93) 484
Reg. v. *The Grand Junction Railway Company*, (4 Q. B. 18; 4 Railway Cases, 1; 13 Law Journal, Mag. C., 94) . 496
Reg. v. *The Great Western Railway Company*, (6 Q. B. 179; 4 Railway Cases, 28; 15 Law Journal, Mag. C., 80) . 510

(*p*) 8 Vict. c. 18, s. 133, post, App., 151. In some acts of Parliament the lands authorised to be taken for public works are altogether exempted from contributing to the poor-rate, or are required to be assessed in a certain prescribed mode. See *R.* v. *The Bristol Dock Company*, 1 Q. B. 535; *R.* v. *The Monmouthshire Canal Company*, 3 A. & E. 619; *Todd* v. *The London and South-western Railway Company*, 7 M. & Gr. 366.

(*q*) 8 Vict. c. 20, s. 107, post, App., 186. See the observations made by the Court of Queen's Bench on the object and purport of a clause somewhat similar to the above, in a special railway act. *R.* v. *The London and South-western Railway Company*, 1 Q. B. 588, post, 495.

Cases.

The rateable value of the land in occupation of a railway company in a parish, such company being carriers on their own line, is to be estimated according to the rent at which the railway might be expected to let from year to year, to a lessee capable of deriving therefrom all the profits which accrue to the company from the conveyance of passengers, cattle, and goods, &c. under the powers of their acts; such lessee finding locomotive power, carriages, &c., and paying the expenses incidental to working the railway, and having the use of the stations, fixtures, and appurtenances of the railway; allowance being made for the deduction specified in the Parochial Assessment Act.

And the same rule is applicable, although the railway act contains a clause empowering the public to carry &c. on the railway, paying certain tolls.

In each parish the line is to be rated in the proportion of the earnings of the railway in the parish, not of the comparative length of the part of the line within the parish.

Regina v. *The London and South-western Railway Company*, (1 *Q. B.* 558; 2 *Railway Cases*, 629; 11 *Law Journal, Mag. C.*, 93).]—On an appeal by the railway company against a rate, dated Nov. 5, 1840, made for the relief of the poor of the parish of Mitcheldever, in the county of Southampton, the sessions confirmed the rate, subject to the opinion of the Court of Queen's Bench on the following case:—

Case.

The company are established and act under certain special acts of Parliament, copies of which accompany this case, and are to be deemed to constitute part thereof, and may be referred to by the Court or either party at the hearing thereof. Under the powers contained in these acts, or one of them, the company have formed and completed a line of railway from Vauxhall, in the county of Surrey, to Southampton, being a length of seventy-seven miles, and this railway for four miles and a half thereof passes through the parish of Mitcheldever aforesaid; and, in pursuance of the powers and provisions of the acts, especially those contained in the 150th to the 161st sections of the first-mentioned act, the company have caused lists to be made of the several rates, tolls, and sums which the company have appointed to be taken and received by virtue of the said first-mentioned act, and the said company have duly kept, and do duly keep, a separate account, shewing the amount of rates or tolls which would have been received by them for the use of the said railway, in respect of passengers, cattle, or other animals, goods, wares, &c., if carried by any other party or parties; to which said account the overseers of the poor of the several parishes and townships through which the said railway passes have free access, and have liberty to inspect, in manner by the said act provided. The sum which would have been so received by the company for such use of the railway by such other parties in the year next immediately before and up to the time of making of the said rate, in respect of so much of the railway as lies in the said parish, amounts to 3470*l.* 13*s.* 9*d.*, being such portion of the tolls as is earned by the railway company in the said parish of Mitcheldever. The whole sum, however, received by the company for the conveyance of passengers, &c. by the company, in carriages provided, manned, and worked by the company at their own sole expense, including the said sum of 3470*l.* 13*s.* 9*d.*, amounts to 13,880*l.* per annum, in respect of so much of the railway as lies in the said parish. The former sum of 3470*l.* 13*s.* 9*d.* constitutes the proportionate sum for the said parish, which any individual who contracted with the com-

pany for the exclusive right to take tolls for the use of the railway by persons using the same, under the powers and subject to the regulations of the aforesaid statutes, for the transmission of goods, cattle, and passengers along the line, in carriages provided by such persons, would receive from such persons; and the sum of 1293*l.* constitutes the rent which a tenant from year to year would give to the company for the exclusive right to receive tolls for the conveyance of goods, cattle, and passengers, in the manner mentioned in sect. 157 of the said first-mentioned act, along so much of the railway as lies in the said parish, free of all usual tenants' rates and taxes, and tithe commutation rent-charge, and making allowance and deductions for the average annual cost of repairs, insurance, and other expenses necessary to maintain the way, its fixtures and appurtenances, in a state to command such rent. (See 6 & 7 Will. 4, c. 96, s. 1).

The respondent parish contends, that the annual value is not to be estimated on the basis of the tolls alone, nor is to be limited to such tolls or their value; but that the advantage which a lessee of the railway may be expected to derive from his lease, by supplying power, and by carrying upon it, may be taken into account. That, if a lessee is to be supposed capable of deriving from the use of the railway all the profits which now accrue to the company from the conveyance of passengers, cattle, and goods, under the powers of their acts, such lessee finding locomotive power, carriages, &c., and paying all expenses incidental to working the railway, then the whole railway, with its fixtures and appurtenances, might be reasonably expected to let from year to year at a rent which, for the purposes of this rate, may be assumed at 70,000*l.* per annum, at the least, free of all usual tenants' rates and taxes and tithe commutation rent-charge, and making allowance and deductions for the average annual costs of repairs, insurances, and other expenses necessary to maintain the way, its fixtures and appurtenances, in a state to command such rent. That, supposing such rent to be given for the whole line, the proportion thereof in respect of so much of the railway as lies in the respondent parish is to be assumed to be the net sum of 4320*l.* per annum, being the amount at which the appellants were rated in the above rate.

The questions for the opinion of the Court are, whether the company are rateable upon the principle contended for by them, or upon that contended for by the parish; that is to say, whether upon an estimate of the net annual value, obtained from the statement of the tolls which would be received by the company as aforesaid, forming the basis

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of the rent which a tenant would give as before mentioned, subject to proper deductions; or upon an estimate of the net annual value, as ascertained by a rent given by a tenant under the circumstances and for the purposes above stated, as contended for by the parish. Lastly, whether the annual value, upon which the parish rate is to be made, should be such proportion of the estimated rateable value of the whole line, (whichever basis is adopted by the Court) as the length of the part situate in the parish bears to the whole line, or such proportion thereof as the receipts actually derived from or in respect of the carriage of passengers, cattle, and goods, or from tolls upon so much as lies in the parish, bear to the same receipts throughout the whole line. If the rateable value is to be proportioned to the length of the railway in the parish, and not to the receipts, then the estimate, as contended for by the company, should be the sum of 1400*l.* If it is to be proportioned to the receipts as above, and not to the length of the railway in the parish, then the estimate, as contended for by the parish, should be 3800*l.* The rate is to be confirmed, quashed, amended, or sent to be re-heard by the sessions, according to the opinion of the Court upon the above points. *Cur. adv. vult.*

Lord DENMAN, C. J., now (June 4, 1842) delivered the judgment of the Court.—"This case has stood over for consideration for some time, on account of its novelty, and its supposed application to the rating of railway companies in general to the relief of the poor: it must, however, be determined on its own state of facts. And the question raised is, whether, this company being in occupation of its own railway, and at present in the exclusive use of it in fact for the purpose of a large carrying trade, the rateable value of such occupation is to be taken only upon the amount of certain tolls which have been fixed, under the statute hereafter mentioned, as payable generally by all carriers for the use of the way, but which are in fact never paid, or upon the amount of the general profits which the company in fact receives from the occupation so devoted to such carrying trade. Another question was, indeed, raised, as to the mode of measuring the rate, on whichever of the two principles it was to be calculated; whether, namely, it was to be measured according to the proportion which the mileage of the railway in the respondent parish bears to the whole length of the way, assuming the profits to arise equally through the whole, or according to the actual earnings in this parish. This question, however, was not much argued, it being conceded ulti-

mately that the latter was the proper mode; and the result was agreed to be, that the rate ought to be on 3800*l.* if the parish be right, on 1293*l.* if the company can limit their liability to a rate in effect on the tolls only. The railway has been formed, and is regulated under the authority of several statutes. By the first of these, 4 & 5 W. 4, c. lxxxviii, the proprietors were incorporated, and authorised to purchase lands in fee simple, subject to certain qualifications not material now to be noticed. On the land so purchased they are to make and maintain a railway, with warehouses, stations, and landing-places for the purpose of locomotive engines, carriages, wagons, &c., and for loading, unloading, landing, &c. of goods, and the approach and departure of passengers conveyed. For the tonnage of goods, and in respect of passengers, beasts, cattle, and animals conveyed in carriages on the railway, and also for carriages conveyed on it, they may demand certain tolls, of which the maximum is fixed, not the minimum; and, further, they may themselves provide power for the propelling of persons and things, or they may themselves convey such persons or things on their railway, for which, in addition to the beforementioned tolls, they may charge such sums as they may from time to time fix. The company may therefore be simply the owners of the way on which others may place steam power and carriages, and convey persons and goods; and these two parties would then stand much in the same relation to each other as the trustees of a turnpike-road, and the coach and postmasters conveying passengers on it. In this case they would receive the tolls only; the owners of the steam power and carriages, the fares or remuneration for conveyance; and it would be, of course, the interest of the company to raise the tolls to the maximum, or as near to it as the competition of the ordinary modes of travelling would allow. On the other hand, the company may avail themselves of the latter clauses, and unite both characters, of owners of the way and carriers on it; they will then receive both the tolls and the fares. In both cases, the persons or owners of goods conveyed must pay both the tolls and the fares; but in the latter, as the company would be the first and last receivers of both, they might be charged as well as paid in one undistinguished sum—there would be no division; and, supposing the company to be the only carriers, there would be no necessity for fixing any rate of toll at all; the whole payment might just as well be considered fare.

This appears, in fact, to be the existing state of things; but the statute (s. 157) has provided, that, where the proprietors shall carry

that the latter was the proper mode; and the result was agreed at the rate ought to be on 3800l. if the parish be right, or the company can limit their liability to a rate in effect on the . The railway has been formed, and is regulated under the of several statutes. By the first of these, 4 & 5 W. 4, c. the proprietors were incorporated, and authorized to purchase lands in fee-simple, subject to certain qualifications not material noticed. On the land so purchased they are to make and a railway, with warehouses, stations, and landing places for of locomotive engines, carriages, waggons, &c., and for [illegible]

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for their own profit, a separate account shall still be kept, shewing the amount of tolls which would have been received by them merely for the use of the railway, if such conveyance had been by other parties, to which account the overseers of parishes shall have access during the first fourteen days in July and January, in every year. But this act makes no provision for such an account being kept, and open to the same inspection, where other parties do in fact convey on the railway, when it would be equally necessary; an indication, it may be thought, that the framers of the act did not seriously contemplate what in truth has not happened, and probably never will happen—that any parties but the company would ever become carriers on the railway. By the second act, however, which passed in 1837, this 157th section is referred to, as if it directed that the separate account should be kept in both cases, and be open to inspection; and the neglect to keep it, or refusal to permit its inspection, is subjected to the very heavy penalty of 300*l.*, and 50*l.* per diem for its continuance. The effect of these clauses on the argument we must consider in the sequel. By the 172nd section of the first act, all persons have free liberty to use the railway, with carriages properly constructed, upon payment only of the rates, tolls, and sums demanded by the company, and subject to the rules and regulations which they shall from time to time make. The construction of such carriages must also be agreeable to the orders of the company, and approved by their engineer or agent. But although the railway itself is thus under certain qualifications, thrown open to the public as a highway, no corresponding provision appears to have been made with regard to the warehouses, wharfs, stations, or landing-places. Both of the statutes before mentioned (4 & 5 Will. 4, c. lxxxviii, ss. 59, 60; 7 Will. 4 & 1 Vict. c. lxxi, s. 40) contain powers for the purchase of forty additional acres (eighty in the whole) for the erection of additional stations, yards, wharfs, warehouses, and other similar erections and conveniences for receiving, depositing, loading, and unloading goods, and other purposes connected with the undertaking; but, as to these lands, neither statute gives the public any right of access or user adverse to the company; and the use, for anything that appears, might be denied to any individual desiring to become a carrier on the railway. These are the material facts and provisions which the case states, and the statutes supply; and to these we are now to apply the rule of rating prescribed by stat. 6 & 7 Will. 4, c. 96, s. 1. The stat. 3 & 4 Vict. c. 89, was referred to in the argument; but it has,

in truth, little or no bearing on this question: it prohibits the rating of any inhabitant as such inhabitant, in respect of his ability derived from the profits of stock in trade, or any other property, to the relief of the poor; but it expressly leaves unaffected the liability of any occupier of lands or houses to be taxed under the provisions of stat. 43 Eliz. c. 2, and 13 & 14 Car. 2, c. 12. Under stat. 6 & 7 Will. 4, c. 96, s. 1, the rate must be made on an estimate of the "net annual value," and that value is declared to be the rent at which the hereditaments might reasonably be expected to be let from year to year, free of all usual tenants' rates and taxes, and tithe commutation rent-charge, deducting the annual cost of repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent. To this enactment is added a proviso, that nothing in it shall be construed to alter or affect the principles according to which different kinds of hereditaments were, at the time of its passing, by law rateable. The argument for the company may be stated shortly: it is clear, and, if it be applicable to the circumstances, convincing. It is said, that, in order to apply the statute, it is always necessary to suppose the property, in respect of which the rate is imposed, let from year to year; the portion of the railway in the respondent parish must therefore be supposed to be so let; and, in order to estimate the rent, it must be asked what the tenant would take by the demise; the answer to which would be, the portion of the railway itself, and the perception of the toll, as before fixed by the company. He would have the right to place his own carriages on the railway, not in virtue of the demise, but in common with all the world. The gross rent, therefore, will be something less than the amount of the toll by the allowance for tenants' profits; and, after making therefrom the statutable deductions, the residue will be the net annual value on which the rate is to be imposed. If, because the lessee in occupation should place carriages on the railway, and derive therefrom a profit, you were to rate him in respect of that profit, you might equally rate any other carrier using the railway, but having no interest in it; for the user in the case of the lessee is not referable to his occupation under his demise: this, therefore, would be in violation of the statute. We forbear to notice at present the subsidiary parts of the argument. It is obvious that the case here supposed, which is that of a lessee in exclusive perception of the tolls on a railway practically open to rival carriers, is one very different in fact from the case before us—one, moreover, which not only has not oc-

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curred, but, from the nature of things, it may be safely said, never can occur. The supposition of a lease of a portion of the railway, without a demise of the stations, warehouses, and approaches to it, or, at all events, some provision for the use of them, is merely absurd; such a lessee would be a mere toll-collector for the company, without even, as it should seem, any convenient mode of collecting the toll. The supposition, again, of a free competition of carriers on the same railway, is practically little else than absurd: if all difficulties were removed as to the stations, warehouses, landing-places, and approaches, and all these were supposed as much laid open to the public as the railway itself, the very nature of the mode of conveyance forbids a free competition of rival carriers. But how can we suppose any competition possible with the company now the carriers, or, indeed, any free use of the railway, even by a private carriage, the company retaining the independent occupation and control over all the existing approaches? Nay, a lease which should include the stations and warehouses and approaches, and place the lessee, as to extent of occupation, in the same position exactly in which the company now are, would not be without its difficulties; for the company's act is framed, whether quite effectually or not, with some regard to the interest of the public, as well as the company. The travelling and conveyance by carriages drawn or propelled by locomotive engines, are attended with peculiar and very alarming risks; many regulations of police, therefore, are enacted, which the company are charged to enforce; and it is very questionable whether their lessee could be their delegate as to this trust; while it is certain that the company, out of possession, could not discharge the duty so conveniently or perfectly as they now can. These are considerations which make us pause in giving our assent to the argument which suggests them. The proviso in stat. 6 & 7 Will. 4, c. 96, declares that the principles of rating are not to be altered or affected by it; it is therefore important to consider, how, under the circumstances stated in the case, the company would have been rated if that act had not passed. They would then have been found occupying buildings and lands on an entire line of railway, and carrying on a trade not merely therein and thereon, but thereby,—a trade inseparately connected with such buildings and such lands; a trade that could have no existence without the buildings and lands, and but for which the buildings would not have been erected or occupied, and for the sake of which, in great measure, the lands themselves are occupied in a particular manner.

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The profits of this trade would be included in the fares received for conveyance of goods and passengers; and the question would be, whether these profits ought in any, or what degree, to affect the rateable value of the lands and buildings.

There is a class of cases often cited, which has established the principle on which this question is to be answered: we allude, among others, to *Rex* v. *St. Nicholas, Gloucester*, (Cald. 263; S. C., 1 T. R. 723, note (*a*), and *Rex* v. *Bradford*, (4 M. & S. 317). In the first, a steelyard, part of a machine in a street leading by a house, was in the house; sums were paid by persons for weighing their wagons and carts, but these persons were not compellable to weigh them: without these profits, the house was worth 5*l.* a year; these profits were worth about 40*l.*; and these, after due deductions, were included in the rate, as enhancing the rateable value of the house. The Court thought rightly so. Lord *Mansfield* considered the house and machine as one entire thing: "The principal purpose of the house," said he, "is for weighing. The steelyard is the most valuable part of the house." "If," said *Willis*, J., "a billiard-table stands in a house, and the house should, in respect of such table, let at a higher sum, it is rateable, while the table continues there, and it is so let at the advanced rent." *Buller*, J., said, "There is an extraordinary profit arising from the modification of the enjoyment. The only question, therefore, is, whether a man shall be rated for the property he has? If a house to-day is let for 30*l.* per annum, and to-morrow, if turned into a shop, would let for 50*l.*, when it is turned into a shop, it shall be rated at 50*l.*" The Court clearly regarded neither the nature of the source of profit nor its permanence: they looked only to the existing value of the subject-matter of the rate, the house, and rated it according to that value. This principle had become so well established by the time *Rex* v. *Bradford* (4 M. & S. 317) came before the Court, that it was there sought, not to deny, but to evade it, by demising the canteen, and the privilege of using it as such, and selling liquors therein, at two distinct rents, in the hope of successfully contending that the rate should be on the rent for the house only. The Court, however, looked to the substance, not to the form, and held both sums to be parts of one entire rent, paid for the occupation of the house and the enjoyment of the advantages which for the time belonged to it, and for the time enhanced its value. As in the former case, people might cease to weigh at the engine, or the engine might be removed, so in this the barrack might cease to be occupied,

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the customers be all removed, the license to sell liquors might be withheld or forfeited; still, while these remained, and so the additional value was sustained, that value, it was held, must come into the rate; and, as *Le Blanc*, J., expressly said, this was not rating the canteen man in respect of the profits of his trade, but only of the rent which he paid. The occupation of the house was, indeed, necessary for the earning of the profits of the trade, but the house became more valuable, because it enabled the profits to be earned: how it became valuable, the overseers were not to inquire; finding it so, they were to rate the occupier according to that value. We are now to consider a case on which much reliance was placed by the appellants; it has always been considered a leading one, and, we think, will not, on examination, be found to conflict with the preceeding, we mean *Rex* v. *The Trustees of the Duke of Bridgewater*, (9 B. & C. 68). The question there was simply this: whether, when the other occupiers of lands in the parish were rated on four-fifths, not of the actual value, but of their rents taken as the value, the appellants ought, being the owners as well as the occupiers of land covered by water, and used as a canal, and from which the case found they derived no profit, except from the tonnage of goods carried on it, to be rated at four-fifths of the gross receipts of such tonnage. The Court determined, as might have been expected, that equal allowances must be made in both cases; the rent, the sum at which the land will let, is the proper criterion; but the rent, they said, "is not supposed" here "to be the value of the land or of its produce, minus the expense of producing it; but the value, after deducting the expenses of cultivation, and of the farmer's subsistence." On this supposition, it is clear the rate was unequal. This was all that was decided; the trustees were also rated as the occupiers of warehouses, &c., adjacent to the canal; but as to these, by arrangement, no question was to come before the Court; and they were also carriers on their own canal, and received freight, as such, for goods carried, on which the tonnage was included in the rate on the canal. The question being thus confined to the canal, and the trustees, as carriers, merely using it as any other persons might and did, their characters of occupiers of land and carriers were quite distinct; the tonnage strictly represented their profits in the one, the freight their profits in the other: these last were unconnected with the land, did not add to its value, and, therefore, were properly excluded from the rate. Let now the principle which these cases established

be applied to the facts before us. If we wish to know whether the fares would have been properly included in the rate before the Assessment Act passed, we apprehend, that, according to the principle, the only question to be asked would be—do they increase actually the value of the buildings and lands on which the rate is to be made? If they do, and to whatever extent they do, to that extent, due allowances always being supposed, they must, directly or indirectly, be included. It would be no answer to say, that, by the law, the railway is a highway; that all the world may carry goods and passengers on it; that it is an accident that the company alone monopolise all the trade, and that their monopoly may cease to-morrow. These circumstances, so far as they lessened the value of the buildings and lands, would be proper to be taken into the account as to the quantum of the rate; but they would not affect the principle. Then, do the fares increase the value of the buildings and lands? No one can doubt,—indeed the case has answered that they do,—that a higher rent for the buildings and lands might be obtained, in consequence of the facility afforded by the occupation of them to the carrying on of a lucrative trade, and earning the profits on those fares. The case thus supposed would be exactly the same in principle as that of the house and engine, the house and billiard-table, the house converted into a shop, the canteen; and it would be distinguished from the canal case, because there, by agreement, the warehouses, &c., were laid out of consideration: the trustees were, in fact, only carriers, in common with all the world; and to the extent by which their trade on the canal did augment the value of the canal, it was brought into account. But it will be observed, that, so far, we have supposed lands and buildings, the railway and the stations, &c., all in one parish, and included in one rate: will it make any difference in the principle, that the railway is in more parishes than one, and that we are now dealing with a parish in which, so far as appears, there is no station-house or other appendage to the railway? We think not: the subject-matter of the rate in any particular parish is, no doubt, the beneficial occupation of the land there, and you cannot draw into the rate the value of the occupation of buildings elsewhere; yet, as you are to rate on the value in the parish, however occasioned, you cannot strike off any portion, because it would not have existed but for the occupation of buildings in another parish: still it exists, and in the parish, and, therefore, cannot escape the rate there. Suppose A. B. occupying an entire tenement as an inn in two parishes, C.

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talking of intentions, exactly as if it were a public general act, but rather as the mode of carrying into effect a bargain between certain individuals and the public, no doubt intended to limit the rule, if by law they could, to the tolls alone; and these clauses were inserted to effectuate the working of that mode of calculating the assessment, if it should prevail. We have already noticed an omission remarkable enough in the first act, and the awkward mode by which it is attempted to be supplied in the second. But we are not now construing those clauses, only considering the collateral bearing on the argument which their insertion in the acts has. All that need be said therefore is, that that bearing is not strong enough to prevent the application of the general principles of the law to the rating of the company's property in their occupation. We conclude, therefore, in favour of the respondents' principle. The sums are agreed between the parties, and we decide in favour of the larger by the application of admitted principles to the facts, thinking that that represents truly the actual rateable value of the land occupied by the company in the respondent parish. The rate, therefore, will be confirmed."

A railway company, established under the provisions of various acts of Parliament, exercised the trade of carriers on their own line, as well as on other lines of railroad connected therewith, and made profits by the fares and freights paid for the conveyance of passengers and goods. They also took tolls, as authorised by the acts of Parliament, from other parties exercising the trade of carriers along their own line. Such carrying trade was exercised by such other parties, who provided themselves, independently of the company, with locomotive power, carriages, fuel, &c., and stations; they, like the company, making profits of their trade so carried on by them over the railway, and paying the tolls fixed by the company under the acts of Parliament. A third class of carriers over the railway hired from the company locomotive engines, and the use of stations, &c.; they likewise made profits, and paid the tolls, besides a compensation, for the use of the power, stations, &c. provided for them. It was decided, that the company were rateable at an amount which a tenant from year to year might reasonably be expected to pay for the railway, &c., exclusive of the stations, (which were rated separately), assuming him to have the same power of using the railway as the company, and to have the same privileges, i. e., upon the net annual value of the railway, and not upon an estimate of the gross produce of the land, which the company, if not carriers, or which a lessee of the tolls, rates, and duties, of which account was directed to be kept by the acts of Parliament, would in fact have received as lessee, howsoever or by whomsoever the carrying business of the railway was conducted.

It was decided, also, that the rateable value of such occupation was properly calculated, by deducting from the gross receipts of the company, first, a sum per cent. for interest, of the capital actually invested by them in moveable carrying stock: secondly, for tenants' profits and risks: thirdly, for depreciation of stock; fourthly, for working expenses; fifthly, for the rent of stations; sixthly, a mileage for renewing and reproducing.

It was decided, also, that the question of amount was for the sessions; and, lastly, that no deduction ought to be made in respect of goodwill.

Reg v. *The Grand Junction Railway Company*, (4 *Q. B.* 18; 4 *Railway Cases*, 1; 13 *Law Journal, Mag. C.*, 94). By a rate made for the relief of the poor of the parish of Seighford, in the county of Stafford, **on the 6th August, 1843, the Grand Junction Railway Company were rated at the sum of 1050*l.*, in respect of so much of the said railway as passed through the said parish and land adjoining. Upon appeal against the said rate, the Quarter Sessions confirmed it, subject to the opinion of this court on the following case:—**

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The appellants were incorporated, and the Grand Junction Railway formed, by certain acts of Parliament, which are to be taken

to be part of this case. Under these several acts, not only has the line of railway, as originally contemplated, (from Warrington to Birmingham), been constructed and opened for public use, but other railways, made by other parties, from Warrington to Newton, and from Crewe to Chester, and long since opened, have been vested in, and become the property of the appellants; and these, by the provisions of the said acts, or some of them, now form part of the Grand Junction Railway; and the whole is managed, as to accounts and otherwise, as one entire business. Over all these railways, and also over the Liverpool and Manchester Railway, between Newton and Liverpool in one direction, and Newton and Manchester in the other, the appellants themselves exercise the right of being carriers, on their own account, of passengers and goods, providing for themselves stations or stopping-places, locomotive power, carriages, coke, and watering-places, and all other things necessary and convenient for the conveyance of passengers and goods, and charging for such conveyance reasonable fares and freights, in addition (as regards the said Grand Junction Railway) to the tolls or tonnages which they are authorised by the said acts to take, and by this carrying trade, as well as by the toll, the appellants make profits. Other parties also exercise the right of being carriers over various parts of the Grand Junction Railway, and, amongst others, over that part which is in the respondent parish, providing for themselves, without the consent or concurrence of the appellants, and independently of them, (subject, however, to the control of the appellants), locomotive power, carriages, coke, and watering-places, and all other things necessary for conveyance of passengers and goods, and separate stations and stopping-places adjoining the railway, and the needful branches into, or communications with, the same; and they, like the appellants, make profits of their trade so carried on by them over the railway, and they pay to the appellants the tolls or tonnages duly fixed by the appellants, pursuant to the said acts, and being the same tolls as form the basis of the calculations hereinafter mentioned.

A third class of carriers over the Grand Junction Railway hire from the Grand Junction Railway Company locomotive engines and the use of stations, &c., but find their own carriages; and they likewise make profits over the railway. These also pay to the appellants the said tolls or tonnages, besides a compensation for the use of the power, stations, and the other accommodations provided for them. The total length of so much of the Grand Junction Railway as lies between

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Birmingham and Newton is eighty-four miles, and from Crewe to Chester twenty-one miles, making together 105 miles; and the distance (along the Liverpool and Manchester Railway) from Newton to Liverpool is fifteen miles, and from Newton to Manchester sixteen miles; the length of railway within the respondent parish is one mile, and there is no station, stopping-place, or property of the appellants, other than the railway itself, in the said parish. The appellants have duly caused toll-boards or lists to be made and published, as required by sects. 165 and 166 of one of the statutes above mentioned. The appellants have also duly kept the accounts of tolls, as required by sects. 19, 20, and 27 of subsequent statutes; and free access has been afforded to them, as required by those acts. The fares and charges for the conveyance of passengers, goods, parcels, &c. by the appellants as carriers, are regulated by the number of miles through which they are carried, as well as by weight, bulk, value, &c., and various other circumstances, in like manner as the fares and charges of other carriers. The gross sum received by the appellants as tolls, rates, or duties, including both what they receive from other companies of persons using the railway as carriers, and also the gross sum of the tolls, rates, or duties, (of which an account is also kept as aforesaid), calculated upon all the passengers, goods, &c., carried by them for their own profit, (added together), amount actually to the sum of 1500*l.*, in respect of so much of the railway as lies in the respondent parish, for the current year of rating. And this is the gross produce of the land, which the appellants, if not carriers, or which a lessee of the tolls, rates, and duties, would in fact have received as lessee, howsoever or by whomsoever the carrying business of the railway was conducted; and the appellants contended, that this sum of 1500*l.*, so found, ought to form the basis of any rate upon them in respect of their rateable property.

The gross yearly receipts of the company, including as well the tolls actually received by them, as the tolls, fares, freights, and profits of every kind derived by them as carriers upon and owners of the Grand Junction Railway and its appurtenances, in all the parishes between Birmingham and Newton and Crewe and Chester, (including their receipts over the Liverpool and Manchester and other railways which do not belong to them, but for passing over which, as carriers, they pay toll in the same way as the independent carriers over the Grand Junction Railway), and including also the profits of their stock-in-trade and personal property, used by them as

carriers in connexion with, and upon, the entire Grand Junction Railway, and their working over and along it, and also the rents, profits, and value of all their stations and other conveniences, at and between Birmingham and Newton and Chester and Crewe, are agreed, for the purposes of this case, to amount to the sum of 440,366*l.*, for the current year of rating; and adopting the principle of a mileage division thereof, that is to say, dividing the same by 105, (being the total length of the Grand Junction Railway), the amount is 4,193*l.* (and a fraction), and in respect of so much thereof as lies in the respondent parish; and it is, for the purpose of the present case, admitted, that that mileage principle of division is fair and equal, as respects the respondent parish. It was admitted and agreed, (subject to the opinion of the Court as to the propriety and principle of each item of deduction), that if the 1500*l.*, (*i. e.* amount of tolls) is to be adopted as the basis of calculation, the full net annual value of the appellants' rateable property within the respondent parish will be 712*l.* 10*s.*, being the 1500*l.* minus the following deductions, (which the Court of Quarter Sessions find to be reasonable in fact): viz. first, 20*l.* per cent. thereof, as for the tenants' profits and subsistence, regard being had, in this case, to the extensive amount of responsibility, risk, &c.; secondly, 2*l.* 10*s.* per cent. for collection of the tolls; thirdly, 350*l.* per mile for the maintenance of the railway, with the works and fences, and for gate-keepers, and also for engineering and police, (as to so much of the two latter items as are fairly chargeable on the proprietors of the railway as such); fourthly, 70*l.* per mile for poor-rates, highway-rates, church-rates, and tithe commutation rent-charge; and, fifthly, 30*l.* per mile, as for renewing or reproducing those portions of the subject-matter of the rate which are of a perishable nature, (such as rails, &c.), when rendered necessary by accident or decay.

The parish officers adopted, and the Court of Quarter Sessions sanctioned, by their judgment, a different mode of arriving at the net annual rateable value of the property of the appellants in the parish. They ascertained the gross yearly receipts of the company throughout the railway, as above stated, viz. the sum of 440,366*l.*, and then made therefrom the following deductions, (the propriety, principle, and completeness of such deductions, as well as the propriety and principle of the respondents' mode of arriving at the net annual rateable value of the rateable property of the appellants in the parish, being referred to the opinion of this court, and the Court of Quarter Sessions finding such deductions to be reasonable in fact):

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viz. 5*l.* per cent. for interest on 255,000*l.*, being the capital necessary for, and actually invested by the appellants in, the purchase of engines, carriages, and all the other moveable stock necessary for the business of the carriers, as conducted by them in manner aforesaid; secondly, 20*l.* per cent. on the same sum for the tenants' profits, and the fair profits of such a trade carried on by means of so large a capital, and with such large risks; thirdly, 12*l.* 10*s.* per cent. on the said last-mentioned sum, as the fair annual amount of the depreciation of such stock, considered to be in the hands of a tenant from year to year, beyond all needful and usual annual repairs and expenses; fourthly, 198,962*l.* per annum, being the appellants' reasonable annual actual costs of conducting their business during the same year, in which their earnings as aforesaid amounted to 4190*l.* per mile, in Seighford, viz. (in the coaching department), wages of guards, conductors, porters, station-keepers, clerks and policemen, repairs of carriages, trucks and horse-boxes, horseing parcel carts, oil, grease, &c., for carriages, and duty on passengers, &c., and (in the merchandise department) salaries and wages of agents, clerks, porters, &c., repairs of wagons and carriages for live stock, and expenses (in both departments), and, generally, locomotive power, engine-men's and fire-men's wages, engineering, repairing, and cost of materials, including coke, maintenance of way, repairs of stations and buildings, office and general expenses, insurance and advertising, charge of direction, compensation account, rates and taxes, law expenses, and, generally, petty disbursements attendant on the several businesses of railway owners, and of railway carriers; fifthly, as the stations, offices, stores, and buildings, and repairing works and premises throughout the railway, have been and are separately rated in the several parishes in which they are situated, (although necessarily used and occupied for the purposes of and in connexion with it, and with the conduct of the traffic upon it), the respondents further deducted the fair annual value thereof, viz. 9150*l.*; and, sixthly, 30*l.* per mile, as for renewing or reproducing rails, chairs, sleepers, &c., as before. The balance, amounting to the net sum of 133,479*l.*, was taken to be the net annual value of the whole railway, independently of the stations and other buildings, &c., rated separately.

And the sessions found, as an inference from the above facts, that the railway and other corporeal hereditaments of the company in connexion with the railway might reasonably be expected to let to a tenant from year to year at the last-mentioned sum of 133,479*l.*, ex-

clusive of the rent of the stations and other buildings rated separately, such tenant being assumed to have the power of using the railway and all its appurtenances, now the property of the company, under the same circumstances as the company, and with no other privileges and advantages than the company now possess. The principle of mileage being agreed upon by both parties as fair, for the purposes of this rate, both as applied to the expenses and deductions, as well as receipts, the net annual rateable value of so much of the railway as lies in the respondent parish is to be taken at 1050*l.* at least, supposing the principle of rating adopted by the parish officers in this case to be just and correct. Of the total net receipts of the company, only about 30,000*l.* per annum are received in the shape of tolls from other parties using the railway on their own account. All the other rateable property in the respondent parish is rated upon an estimate of the net annual value thereof, within the meaning of the Parochial Assessment Act, and without directly taking into account any receipts expenses, or allowances, having reference to the amount of actual profits made thereon. The appellants have not any stations or buildings in the respondent parish. In various parishes along the line of railway, the parties who (as before mentioned) use the railway as carriers, and have stations, with buildings, &c., with branches into the railway, and other conveniences connected with the railway, are not rated (in the particular parishes or elsewhere) upon, or in respect of, or with any reference to the Grand Junction Railway, but solely for their stations. The appellants derive no pecuniary profit whatever from their land in the respondent parish, except from the tonnages and tolls, and from their fares and other receipts hereinbefore mentioned, and their trade as carriers in common with other carriers over the same, if, indeed, these latter profits are to be considered as profits arising from the land, which the appellants contend they are not. The appellants contend, that, even assuming the rate to be founded on a just principle and proper basis, the deductions allowed by the respondents do not include all the items necessary to bring out the net annual value, that is to say, the rent at which what the respondents contend is the appellants' rateable property might reasonably be expected to let from year to year, amongst which omitted deductions the appellants instance, by way of example, an annual allowance for good-will.

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Appellants' Account.

				£	s.	d.
Gross produce (both to landlord and tenant) in Seighford parish, (for year of rating), per mile				1500	0	0
Tenants' profits, subsistence, risks, &c., 20*l.* per cent. on gross produce	£300	0	0			
Collection of tolls, 2*l.* 10*s.* per cent.	37	10	0			
Maintenance of way, and engineering and supervision of way, and policemen, pointmen, and gate-keepers	350	0	0			
Poor-rates, highway-rates, church-rates, and tithe rent-charges	70	0	0			
Renewing and reproducing	30	0	0			
				787	10	0
				£712	10	0

Respondents' Account.

				£	s.	d.
Total gross receipts and profits, &c., per annum				440,366	0	0
Interest on capital invested in moveable carrying stock, of 255,000*l.*	£12,750	0	0			
Tenants' profits and subsistence, 20*l.* per cent. on same capital	51,000	0	0			
Depreciation of stock, 12*l.* 10*s.* per cent. on same capital	31,875	0	0			
Working expenses	198,962	0	0			
Rent or value of stations	9,150	0	0			
Renewing or reproducing, 30*l.* per mile	3,150	0	0			
				306,887	0	0
				£133,479	0	0

Which gives the rateable value of the whole line of the railway, and upon which calculation it was admitted, that, adopting a mileage division, 1050*l.* represented the rateable value of so much of the line as passed through Seighford parish.

The Court of Quarter Sessions adopted the principle of rating, and the deductions contended for by the respondents, on furnishing the net annual value of the appellants' rateable property pursuant to the

Parochial Assessment Act, and confirmed the rate accordingly; but, on the application of the appellants, granted a case for the opinion of the Court on the several questions hereinbefore raised and stated; the Court to have the power of amending or quashing, or otherwise dealing with this rate, as they might deem right. *Cur. adv. vult.*

Lord *Denman*, C. J., now (May 10, 1844) delivered the judgment of the Court.—This was an appeal against a poor-rate, and was argued in Michaelmas Term last, and again on a concilium in Hilary Term, and has been heard by all the members of the Court. Independently of certain questions of detail which we will consider hereafter, the main argument of the appellants was directed to shew that this case is distinguishable from the case of *The Queen* v. *The London and South-western Railway Company* upon points which went to the principle of the judgment in that case; while the respondents contended, that the two cases are in principle the same, and that that judgment must govern the Court in this case. It is necessary, therefore, in the first place, to compare the two cases. If they shall be found to be different in the material circumstances, the principles of that decision may lead to a contrary one in this case; at all events, on that supposition, that decision will not bind in the present case. If they shall be found to be substantially the same, it may be necessary to consider whether our own reflections, or anything urged in the argument, should induce the Court to depart from their former decision. In that case, the facts found (and it must never be forgotten that the propriety of a poor-rate can only be determined with reference to the facts found to be actually existing when it was made) were, that the company were in the sole and exclusive occupation of the railway, warehouses, stations, and landing-places, and, being so, were solely and exclusively carrying on a large business as carriers thereon; that, although their act had, under certain limitations, made the railway a highway for all the liege subjects, and gave them a right to use it as such, either as carriers or for individual travelling, and in such cases provided for the payment of tolls to the company, yet that, in fact, no one having availed himself of this right, nor, as we think, having the power of doing so conveniently or effectually, no tolls were in fact earned. To this then existing state of facts, we applied the established principle of rating —that the rate is to be made upon the occupier in respect of the beneficial nature of his occupation; in estimating which as to the

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amount, or, to put it in other words, in ascertaining how much annual rent such an occupation may be expected to command, parish officers are to consider, not drily and only what would legally pass by the demise of it, but all the existing circumstances, whether permanent or temporary, wherever situated, however arising or secured, which would reasonably influence the parties to the negotiation for the tenancy as to the amount of the rent. We therefore thought it impossible, in that case, to separate the three or four miles of the railway within the respondent parish from the whole line running through many other parishes; or that whole line, from the warehouses, stations, and landing-places; or those, again, from the consideration of the peculiar conveniences which the tenant would have for carrying on (as occupier) a lucrative business, if not the effective monopoly which the provisions of the act appear to give to the occupier for carrying on such a trade. What, under the act, was possible by law,—what, in point of fact, might in future be,—we thought immaterial as to the principle, although very fit to be taken into account when making the calculation as to the quantum; but, in principle, the parish officers were to look at the actual state and value of the occupation. In the case now under consideration, there are some facts entirely different from those which we have just mentioned; the case finds, that other parties, as well as the appellants, exercise the right of being carriers over various parts of the railway, including therein that part of it which is within the respondent parish, providing for themselves, independent of the company, (subject, however, to its control under the acts of Parliament), carriages and all things necessary and convenient for the conveyance of passengers and goods, separate stations, and independent branches into, and communication with, the railway. These make profits of their carrying trade, as do the appellants, and pay them the tolls which they have fixed under the powers given them by their acts. Besides these, another class of carriers hire from the appellants engines, and use the landing-places, &c., but find their own carriages; these also make profit of their carrying trade on the railway, and pay to the appellants both toll and a compensation for the use of the engines, stations, and other accommodations provided for them; and, as the appellants receive tolls from these persons in respect of the goods and passengers conveyed by them on the railway, so they keep an account, as directed by their act, of the toll which would be produced by them for the conveyance of goods and passengers not on their own account.

This, added to the compensation above mentioned, forms the total produce of the whole land, which the company, if not a carrier, or a lessee of the railway carrying on no trade upon it, would receive as the aggregate of the line, and is that upon which alone, after due deductions, the company contend the rate ought to be imposed. We understand them, although it is not precisely so stated, to admit the principle of considering the whole line as entire, and to arrive at the exact sum at which they contend the rate in the respondent parish should be fixed by a mileage division of the whole line,—a principle very convenient in itself, and rightly adopted by consent. It is unnecessary, after this statement, to point out the difference, in fact, between the two cases; but we cannot see how this difference bears upon the principle on which the rate is to be imposed, or which governed the Court in the former decision, which proceeded entirely on the existing state of the facts. Each of the two companies must be rated in respect of the occupation of the land: one of them derives no benefit from that occupation, except by carrying goods and passengers, and the division of that profit into tolls and fares we think merely nominal; the other, in addition to this mode of profit by occupying, also derives a profit from allowing others to carry goods and passengers on the line also; and this latter profit is properly called tolls. Still, in both cases, the inquiry must be the same—What is the value of the occupation, from whatever source derived? In neither can the profits of trade, as such, be brought into the rate; but, if the ability to carry on a gainful trade on land adds to the value of the land, that value cannot be excluded on the ground that it is referrible to the trade. Suppose a house occupied by a private family to-day, which, having greater advantages of situation for the purpose of trade, should be turned into a shop to-morrow, and, in consequence, let for double or treble the former rent: would not the rate be properly increased in proportion? Could it be objected, that to do so is to rate the profits of trade? Again, suppose the occupier were to let out different rooms to other persons carrying on the same trade as himself, and this mode of occupying was said to increase the value of the house to let: would this at all vary the principle on which he was rated, although it would increase the quantum? Lastly, suppose, instead of this species of under-letting being at the option of the occupier, all persons using the same trade had the right by some statute, under certain restrictions, to carry it on in the different rooms of the same house, paying a large compensation to the occu-

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pier: would not the principle of the rate be still the same? Would it be material to inquire how the occupation became more valuable, except for the purpose of making greater or less deductions, which the nature of the occupation would make just? We may all remember when the large premises in Soho-square, now used as a bazaar, were occupied as a private residence. The present mode of occupation, no doubt, increases the rent; but whether one man, being the tenant alone, carried on the various trades now exercised there, or sold goods himself at some of the stands, and let out others, and so derived his profit in part directly from trade, in part from the rent paid him by the traders, or let out all the stands, and so earned no profit but from the rents paid him by the traders, the result would be, in either case, exactly the same; the overseers could only inquire what was the fair rateable value of the thing so occupied. Nor, as we have said before, could the inquiry be at all affected if the occupier of the bazaar held it under some statutable license, which compelled him to let his stands to all persons paying certain rents, and submitting to certain regulations. But it is said, that, in the case supposed, all is referrible to the occupation under the supposed lease that conveys the exclusive dominion, and thence flow naturally the means of making profits. We have, in truth, already given the answer to this; but it will be plainer if we observe, that there is a fallacy in confounding that which the lease conveys the legal title to, with that which it gives the lessee the means of doing or obtaining. No two things can be more distinguishable; and it is the latter which regulates the rent the tenant will give, and not the former. Suppose two estates of equal size, and in all respects of equal fertility, but one surrounded by excellent roads, a canal near to it, and a large market, and the other without these advantages; of course the rent and rateable value of the one would be larger than the other, yet a tenant would take no more by the lease of one than he would by the other; the lease would give him no legal title, which he had not before, to use the roads, canal, or market. Or, suppose a more peculiar case: A., the owner and occupier of Blackacre, and having the command of a stream of water which he can turn over Whiteacre, and on that account desires to rent it; to him it will be more valuable than to any other occupier, because he fertilises at very little expense; he will therefore give a larger rent than any other person; yet, by the lease, he would take no more than any other person, although he ought undoubtedly to pay a higher rent. Apply the principle of this case

to the railway of the appellants, and it is quite true, that, if they were to let it to a tenant, the lease would convey the land and railway only, and give a title to the tolls only; but the lessee would undoubtedly consider the facilities and advantages which the occupation as tenant would afford him for carrying on a lucrative trade as a carrier; and in whatever proportion that consideration would increase his rent, in the same, after due allowance, would his rate be raised also. The two propositions are equally true, that the rate is not to be imposed in respect of the profits of trade, and that it is to be imposed in respect of the value of the occupation; and two propositions that are true, and applicable to the same subject-matter, cannot be inconsistent; and we think the respondents in the present case, by the scheme they proposed, have shewn that they are not so. The gross yearly receipts of the company, as occupiers of and carriers on the railway, must include the proper subject-matter of the rate: they have therefore taken a sum agreed to represent them as the first point to start from; they then assume an amount of capital employed in the trade, and deduct from the former sum 5*l.* per cent. on the latter for the interest of this capital, and 20*l.* per cent. for the profits which ought to be made upon it; 3rdly, for the depreciation of stock beyond the usual repairs and expenses; 4thly, they deduct from the gross receipts the annual cost of conducting the trade; 5thly, they deduct the annual value of all the lands occupied by stations, &c.; and, 6thly, a sum per mile for the reproduction of rails, chairs, sleepers, &c. These deductions, taken together, seem to us to include whatever is properly referrible to the trade, as distinguished from the increased value which that trade gives to the land. We do not now speak of the amounts allowed under each item, and we are not competent to give any opinion on this point, which is properly for the sessions; but if these are the proper heads of deduction, then the residue must represent the value of the occupation; and if so, this alone is brought into the rate, and the profits of the trade are excluded. Accordingly, the sessions have found, as an inference from the facts, that the residue is the sum which a tenant from year to year might reasonably be expected to give for the railway and corporeal hereditaments now occupied by the company in connexion with the railway, exclusive of the stations and other buildings, (which are rated separately), such tenant being assumed to have the same and no other power of using the railway, the same and no other advantages and privileges, than the company now possess. If the deductions exhaust that portion of receipts referrible to trade, the

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inference of the sessions is fair. If the advantages and privileges which the company possess are attributable to their occupation, and would pass with it, their assumption is well founded, and we agree with them in both. The appellants, however, contend, that, even if the principle of the rate be fair, some reasonable deductions are omitted. We have used the sufficiency of the deductions made as a mode of trying the principle, but the objection of the appellants now to be considered is one of detail. The only instance which they specify and rely upon is, that an allowance ought to be, and is not, made for goodwill. We presume by this it is meant, that a person bargaining with the company to become their yearly tenant of the railroad, in the expectation of succeeding to their trade as a probable consequence of succeeding to their occupation, would properly be called upon to pay them something for the goodwill of that trade, and that this would be in the nature of an outgoing and deduction from the profit. This objection appears capable of two answers: the first and the decisive one is, that the purchase of the goodwill implies that a trade is sold—that the company are to be bound to surrender their trade to the lessee, and no longer to be carriers on the line; but the calculation of the sessions proceeds on no such supposition. All those special advantages, indeed, for carrying it on which the occupation gives them, whatever they may be, they must necessarily surrender; but the moment they have leased the railway they would become part of the public, and have the right of carrying on their trade, retaining all the goodwill, with all those advantages which were carefully reserved to the public. Secondly, although the supposition is that a tenancy is to be made, yet what the incidents of the tenancy must be as to the actual terms of allowance must be determined, for the purpose of fixing the amount of the rate by the actual state of things; for this supposition of a tenancy is only a mode of ascertaining the existing value of the occupation to the existing occupier. Now here there is no tenancy in fact—no goodwill is, in fact, paid for; and therefore no deduction ought, in fact, to be made on account of its price. Again, it is contended that the existing facts of this case shew the unreasonableness of the rate. The carrying trade of the company goes beyond their own line upon the railway of other sets of proprietors, but the receipts arising from this have been excluded from the rate; this, it is said, is inconsistent. How can the profit which the same engine earns by drawing goods over one mile be of a different character from that it would earn in the same employment

over the next mile? So far from there being any inconsistency in this, it is necessarily involved in the principle on which the rate rests. That the distinction can be made, and has been made, is no slight proof of the soundness of that principle. The moment the engine leaves the railway of the company, what it earns ceases to have any connexion with their occupation of the railway. It may, and of course does, increase the value of the occupation of that other line on which it then works, and will, of course, in the shape of toll, proportionately increase the rate which the occupier will pay; but if it were allowed to swell the charge on the company, it could only do so in respect of the profits of the trade; and this our principle excludes. But it is said, lastly, that this principle works injustice between the company and the other corporations and individuals who carry upon the line; their engines and their trade, it is said, pay nothing to the poor-rate, nor their fares, and they pay indirectly only in respect of their tolls, which may be supposed to be calculated so as to bear their own rates, whereas the company pay both on their tolls and on their fares. Colour is given to this objection from the fact, which might seem to explain it, that the company fill two characters, the other party one only; but the proper answer is a denial of the fact: the company do not pay directly or indirectly on their fares; they pay it only on the increased value of their occupation of the land, occasioned by whatever circumstances. If the trader should underlet to a lodger a room in his house, in which he drives the most profitable trade imaginable, such lodger would pay no poor-rate at all; but as the trader would proportion the rent at which he lets the lodging to the advantages which such lodger derives from them, the total rent which a trader would pay, and the rate which could be imposed on it, would be proportionately increased. But could he complain of any injustice, or say that he carried on his own trade in the rest of the house to disadvantage, because in his rate the value which the trade so carried on in the residue gave to the occupation was also taken into account in fixing the quantum of the rate? Yet these parties who carry on a trade on the company's line are, in effect, but in the nature of lodgers, or parties enjoying a profitable easement on the line, and, by the consideration they pay, increase its general value. In the examination which this case has compelled us to make, we have been necessarily led into a reconsideration of the principles on which the decision in the case of the South-western Railway Company proceeded. That decision was not directly impugned, but the

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distinction of facts relied on has appeared to us on examination so unsubstantial, that it was necessary, in order to a decision against this rate, to examine the principles on which that was upheld; and in a matter of such vast importance, and such apparent novelty,—where, too, the decision of this Court cannot be reviewed in a court of error,—we were not unwilling again to examine the question. Upon the whole, we are satisfied with the decision of the sessions. It appears to us founded upon a just application of established principles, and in accordance with many decided cases, and conflicting with none.

Our judgment, therefore, will be for the respondents.—Order of sessions confirmed.

The Great Western Railway Company are owners and sole occupiers of a line of railway 118 miles in length, and are also lessees and sole occupiers of two branch lines, forty-four and eighteen miles in length respectively, issuing out of the main line. Upon all these lines they carry on exclusively a large trade as carriers, the receipts of which from the branch lines alone, if set against their expenses and rent, would make the occupation of them, in fact, a losing concern; but this occupation increases the traffic upon the main line. The mode adopted by the parish officers in rating the railway was as follows:—They took the gross receipts per mile in the respondent parish. From this they deducted a mileage proportion of the expenses, and of the interest and tenants' profits on the plant of the whole line of railway, and rated the company on the residue. It was decided, that, among the above deductions, an allowance ought to be made in respect of the depreciation and wear and tear of the rails and sleepers, the solid timber and iron-work of the main line, if paid out of the income of the company, and charged as an item of annual expenditure, before the division of profits, under sect. 145 of their act; but not if paid out of their capital; and also for the rateable value of buildings appurtenant to the main line and branches, rated or rateable elsewhere than in the respondent parish: but that no allowances should be made for interest on the sum expended in procuring their act, raising their capital, and other original expenses; nor for additional parochial assessments which may become payable in consequence of the recent decisions of this Court on the subject; nor for the actual loss on the branch lines.

Quære, whether a deduction ought not to be made for all or part of the income tax, which, by 5 & 6 Vict. c. 35, is to be charged, in the case of railways, on the profits of the preceding year, in respect of the property thereof.

The reasonableness of the per centage to be deducted for tenants' profits is a question entirely for the sessions; but when the value of the plant has become diminished, the per centage should be calculated on the present, not the original value. Such deduction, however, was not allowed to be made in this instance so as to increase the present rate.

Reg. v. *The Great Western Railway Company*, (6 *Q. B.* 179; 15 *Law Journal, Mag. C.*, 80; 4 *Railway Cases*, 28.)—This was an appeal against two rates, bearing date the 3rd of November, 1842, and the 16th of February, 1843, in the former of which the Great Western Railway Company were rated as occupiers of the Great Western Railway, with the appurtenances, in respect of a portion of the railway extending two miles and one-sixteenth of a mile in length within the parish of Tilehurst, and containing thirty acres of land, at the sum of 2475*l.*, and, in the latter, in respect of the same property, at the sum of 3093*l.* 15*s.*, (the said two rates being respectively at the rate of 1200*l.* and 1500*l.* per mile); against both of which rates the company appealed. At the hearing of the appeals, at the Easter Quarter Sessions for Berks, 1843, the Court confirmed the rates, subject to the following case:—

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The Great Western Railway Company was established by certain acts of Parliament. Copies of these acts, and also of the two half-yearly reports made at the general meetings of the company, held 10th August, 1842, and 10th February, 1843, which accompany this case,

are to be deemed to constitute part thereof, and may be referred to by the Court and either party, at the hearing thereof. Under the power contained in these acts, the company have completed a line of railway from Paddington to Bristol, being a length of 118 miles; and this railway, for two miles and the sixteenth of a mile thereof, passes through Tilehurst. The Great Western Railway Company, in order to increase the traffic on their line, became and were, before and at the making of the rates, lessees of a branch line from Bristol to Taunton, for a term of years, on the terms of paying to the proprietors thereof for the use of the whole of the said branch line, being a distance of 44 miles, including the right to use the stations, and the right of taking all rates and tolls for the conveyance of passengers, cattle, and goods, the sum of 50,000*l.* per annum. In like manner, and for the same purpose, the company became lessees of a branch line from Swindon to Cirencester, being a distance of eighteen miles, for the use of which, including all the rights and privileges above mentioned, the company, at the making of the rates, were liable to pay to the proprietors thereof a rent of 17,000*l.* per annum. By reason of the incomplete state of the branch railways, the whole length of permanent way worked by the Great Western Railway Company, both as proprietors and as such lessees, amounted, during the current year of rating, to 175 miles only. The company, as such lessee of the two last-mentioned lines, were, in fact, at the time of making the rates, incurring annually a loss of 10,500*l.* over and above the actual net receipts in respect of those two branch lines, the rents exceeding by that sum the net profits earned on those lines; and this loss was incurred solely for the purpose of benefiting by the increased traffic occasioned by those lines on the Great Western Railway. The appellants do not themselves maintain or repair the above branch railways, or the buildings connected with them, but they pay rates in respect of them, and they carry on the business as carriers, jointly, on the whole of the united lines as one entire concern. The said company, since the passing of their acts, and the completion of the railway, have not only taken certain tolls, authorised by the said act, but they have also provided the locomotive power and carriages, and have themselves conveyed, upon all the three railways, passengers, cattle, and goods for hire, in addition to the said rates and tolls; and, in point of fact, the said company, since the completion of the said railway, have been in exclusive occupation of the said railway as carriers, no other carriers having availed themselves of the privileges conferred

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by the act, of providing carriages or power independent of the company. There is no station or building in Tilehurst, nor is there any extraordinary profit or expense in the repairs or maintenance of the railway in that parish; but the expenses may, for the purpose of these rates, be fairly taken as proportional to the length in the parish, as compared with the whole length of the united lines. The different stations and buildings throughout the lines are to be considered as rated separately from the railway.

The following are the detailed particulars of the mode in which the rates allowed by the Court of Quarter Sessions was ascertained by the parish officers. The gross receipts of each mile in the parish of Tilehurst were ascertained to be 3680*l.* The expenses of the whole line of the three railways, during the period to which the rates apply, amounted to the sum of 257,205*l.* 14*s.* 11*d.*, comprised under the following heads:—

	£	s.	d.
1. Maintenance of way	49,643	6	5
2. Locomotive account: viz. coal, coke, repairs, wages to drivers, firemen, oil, tallow, and all other incidental expenses	74,725	9	0
3. Carrying account: viz. wages to guards and conductors, police messengers, and porters' clothing, repairs of carriages, stores, &c. . . .	60,714	15	2
4. General charges: viz. superintendants' and clerks' salaries, advertising, printing, stationery, and sundries, including travelling expenses . .	23,126	2	11
5. Disbursements for repairs, and alterations of stations and buildings connected with the railway	1,682	6	8
6. Compensation for fire and other accidents, and other casual returns and allowances connected with the trade	1,536	10	0
7. Government duty on gross receipts from passengers	25,783	4	6
8. Rates and taxes of all kinds assessed on the company in respect of the property, and actually paid (other than the property tax) . .	11,340	14	8
9. Direction and office expenses	8,643	5	7
Total . .	£257,205	14	11

Adding to this the annual depreciation of the plant or moveable stock necessary for working the whole line of railway, together with the branches, which amounted to 20,000*l.* a year, the total expenses amounted to 277,205*l.* 14*s.* 11*d.*

The proportional expenses of one mile, (being $\frac{1}{178}$ of the whole), 1584*l.*

The value of the whole plant or moveable stock, at its first cost, was about 580,000*l.* On this sum, the respondents allowed—

	£	*s.*	*d.*
5*l.* per cent. as interest on that stock . .	29,000	0	0
10*l.* per cent., as tenants' profits, including the profits of trade	58,000	0	0
	£87,000	0	0
The portion of this in respect of one mile in Tilehurst parish, (being $\frac{1}{178}$ of the whole) . .	497	0	0

From the gross receipts for each mile in Tilehurst they then deducted the proportion of the above expenses chargeable on it, and the portion of the above percentages due in respect of it: thus—

		£	*s.*	*d.*
Gross receipts		3680	0	0
Expenses	£1584			
Interest and profits	497			
Deduct	———	2081	0	0
Leaves		£1599	0	0

This balance of 1599*l.* was taken by the respondents, and found by the sessions to represent the net rateable value of each mile of the railway in Tilehurst parish, and the sessions find the above amounts and sums to be correct, but submit to the judgment of this court the principle on which the calculation is founded, and the propriety and sufficiency of the deductions. They further state, that the percentage mentioned above as tenants' profits is not to be taken as the actual profits of the company from trade, the whole of their receipts and profits being in fact derived directly from their trade; but the sessions find that percentage to include such a reasonable profit of trade as would induce a lessee who carried on the like business under the same circumstances, to forego the rest and to pay it as rent. The appellants contended, that, assuming the estimate of the respondents

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to be founded on just principles, the following additional deductions ought to be made:—

1. The buildings, stations, shops, sheds, and other erections appurtenant to the Great Western line alone, rated or rateable separately from the railway, and necessary for the profitable enjoyment of it, may be taken, for the purposes of these rates, as worth 35,000*l.* a year rateable value at the time of making the rates; and the appellants claim a portion of this sum to be deducted from the receipts in Tilehurst. This deduction, if to be taken as $\frac{1}{121}$ of the whole, is 296*l.* per mile; if to be taken as $\frac{1}{175}$ of the whole, 200*l.* per mile. In like manner, the annual value of the buildings, stations, &c., on the two branch railways above mentioned, may be taken at 10,000*l.* per annum; and if the united value of these buildings in all the three railways is a proper deduction, then the deduction (being $\frac{1}{121}$ of the whole) is 257*l.* per mile.

2. The appellants further claimed a deduction in respect of depreciation and wear and tear of rails and sleepers, being the solid timber and iron work of the Great Western Railway alone. The expense is not included in the item of maintenance of way above mentioned; nor has it been found necessary, as yet, by the company, to appropriate any annual fund for this purpose, because this expense has hitherto been taken from the capital, and not deducted from the revenue; but such deduction, if proper, is to be taken at 20,000*l.* a year in respect of the whole of the Great Western Railway, exclusive of the branches. If divided by 118, the amount per mile is 169*l.*: if divided by 175, the amount per mile is 114*l.*

3. The appellants further claimed the following deductions:—5*l.* per cent. interest on 420,000*l.*, being the outlay in forming the Great Western Railway Company, obtaining the act of incorporation, raising the capital, and other original expenses, 21,000*l.* per annum.

4. Income-tax paid by the company in pursuance of stat. 5 & 6 Vict. c. 35, amounting in the whole to 10,000*l.*

5. Additional parochial assessments not actually paid, but which will be payable in consequence of the recent decisions of this court on the rating of railways, 12,000*l.* at least. This last item includes the rates on all the three railways occupied by the company. It has not yet been paid, nor can it be clearly ascertained until the deductions are settled in each rate.

6. The annual total loss on the two branch lines already referred to, 10,500*l.*

The appellants further contended, that, instead of ascertaining nants' profits by a percentage on the original value of the or moveable stock, they will be more correctly represented by entage on the gross receipts, and that, for that purpose, 15*l.* per on 3680*l.* should be deducted, viz. 552*l.*

t was stated, on the part of the respondents, that the plant or ble stock of the company was, at the time of making the rates, iated in value; and the sessions find that, in fact, it was so depre-, and was then worth about 500,000*l.*, and not the sum of 580,000*l.* ve stated; and if any of the deductions demanded by the com- were allowed, then the respondents claimed to take such re- value on the sum upon which interest and tenants' profits l be calculated, that is to say, 15*l.* per cent. on this sum, 75,000*l.*; te portion of this in respect of a mile in Tilehurst, 428*l.*

sessions find the several sums and particulars above mentioned t in amount, for the purposes of the present case, and they refer court the propriety and principle of all or any of the above de- ns. The rates were to be confirmed, quashed, or amended, or peal remitted for further inquiry, according to the opinion of urt, upon all or any of the above points. *Cur. adv. vult.*

d *Denman*, C. J., now (January 22, 1846) delivered the judg- of the Court.—This case has stood over for some time, from ish to afford it the fullest consideration; and, as our decision be governed by the principles laid down in the two cases of outh-western and Grand Junction Railways, it may be con- t to recapitulate briefly what was in those cases decided; not hey introduced any new principle into the law of rating, but e the circumstances under which the established principle was d were somewhat novel. We there laid down, that, although ofits of trade carried on by the occupier of the land upon it t be made directly the subject of the rate assessed in respect h occupation, and the value of the occupation alone was the subject, yet in that value was to be included whatever at the ormed part of it, whether permanently or not, and from what- ource derived; and, therefore, of course, not less so, although d, in any proportion, from the fact of the trade being so carried on it. Further, that, although the sum to be sought was that , after all due deductions made, a tenant might be found to y way of rent from year to year, in order to be placed as

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occupier in the same position as the party rated, yet this was to be sought, not by drily considering what rent would be given for so many miles of railway as happened to be in the rating parish, apart from all the actually co-existing circumstances, but by including in the consideration all such as would necessarily attend upon the occupation under the demise, and influence the tenant's mind as to the amount of rent which he would give. In the application of these principles, the practical difficulty for those who assess the rate in cases of such complication as railways often present, will be, to distinguish accurately between that which is properly referable to the trade alone, and that increase of value which the carrying on of the trade upon the land gives to the occupation of it. The case of the Grand Junction Railway (4 Q. B. 18, ante, 496) presented many circumstances the same as exist in the case now before us, and we thought that the parish officers there had successfully met the difficulty. We are now to examine the rate stated in this case, only, however, as to its principles, and so much of its details as involve principle; beyond that, and especially as to the accuracy of calculations, the questions must be for the sessions alone. We have here a company sole occupiers of a line of which they are owners. Of this, the land in respect of which they are rated forms a part; they are also sole occupiers, as lessees, of two branch lines, both issuing out of the line first named. Upon all these lines they carry on exclusively a large trade as carriers, the net receipts of which, from the branch lines alone, if set against their expenses and rent, would make the occupation of them in fact a losing concern; but this occupation increases the traffic upon the main line, and, for the sake of this, the company are content to sustain that partial loss. In order to ascertain the rate, the course pursued has been, to take the gross receipts per mile in the respondent parish; and this sum is not in dispute. The deductions to be made from this are calculated on a mileage proportion of all the expenses and outgoings, taking the whole three lines as one entire line in all particulars in which the appellants are at all chargeable; and we do not understand this mode to be objected to. Setting the proportion of these per mile against the gross receipts per mile, the residue has been taken as the rateable value per mile. We are then to see whether these deductions include all such as ought to be made on an ordinary occupation, exclusive of trade, and also all such matters as are distinctly referable to the trade only, and do not enhance the value of the occupation. If so, the principle of the

rate is right. Whether sufficient in amount under each head has been allowed, it is not for us to determine. Nine heads are first stated, which are intended to represent the annual expense of keeping in repair the way, stations and other buildings, the rates and taxes, other than the property tax, payable on them, the expenses of directing and carrying on the business, the government duty on passengers, and some incidental charges connected with the trade. Thus far the outgoings allowed for are annual. The appellants here first object, that, besides an allowance for the merely annual repairs, they are entitled to one in respect of the depreciation and wear and tear of the rails and sleepers, the solid timber and iron work of their own principal line, and this although hitherto they have not charged such expense against their income, but defrayed it out of their capital. In the case of the Grand Junction Railway (4 Q. B. 18), such an allowance was conceded; it is now disputed; and the circumstances must therefore be examined. In themselves, perhaps, repairs of the kind now under consideration are not to be distinguished in principle from what the case denominates maintenance of the way, and which the appellants include under their annual expenses; and although not called for in any particular year, yet if, in the certainty that the charge would in a given time accrue, a proportionate sum had been actually deducted from the annual revenue to meet it, we see no reason why an allowance should not be made for it as much as for annual repairs actually done in the course of the year. But as, in the case of these last, the fact of repairs being needed would not entitle to a deduction unless they were done and the charge incurred, so, in the present case, as no deduction has been made from the revenue, it appears to us that no allowance can be made. For their own purposes, and, as suggested in the argument, in violation of their act of Parliament, the company have chosen to defray the amount, trifling probably at present, out of their capital, so that they have given that which they now seek to consider as tenants' repairs the character of landlord's improvements, the capital expended for which will swell the rateable value of land, but not be allowed in the rate. The appellants next claim to deduct the rateable value of the buildings appurtenant to their own line, and also to the branch lines respectively, and rated and rateable elsewhere than in the respondent parish, separately from the railway itself. This also is an allowance which was conceded in the case last referred to;

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for it would be hardly worth while to distinguish between those rated and rateable only; and we have no means of drawing the distinction in fact. It is to be remembered, that the respondents properly treat the whole line, the whole profits, the whole outgoings, as entire; and then the question is, whether there is any distinction between this and other outgoings necessary to the earning the profits by which the rateable value of the land in the respondent parish is enhanced. It seems to us there is none; and, if so, we agree with the learned counsel for the appellants, that, in principle, it is indifferent whether the station be in the same parish or at a distance. The appellants claim, thirdly, an allowance for 21,000*l.* yearly, interest on the sum expended in forming their company, obtaining their act of Parliament, raising their capital, and other original expenses. For this there is no foundation. These expenses have no connexion with the rateable value of the railway. They might all have been incurred, and no railway ever constructed. As well might the purchaser of an estate with borrowed money, and after an expensive litigation as to the title, claim to deduct his interest and expenses from the poor-rate on the land when in his occupation. They neither add to the value of the occupation, nor are any way necessary to the making it up. The appellants then claim to be allowed in respect of 10,000*l.* paid by them as income-tax under stat. 5 & 6 Vict. c. 35. This claim is very shortly and unsatisfactorily stated. In respect of what the payment has been made, we are not informed on either side: the argument respecting it was short. The respondents treated the claim as made in respect of the charge on the property in land payable by the owner; the appellants claimed it in respect of the charge on the occupation payable by the tenant, and to this extent at least it does not strike us that there is any reasonable distinction between this and any other outgoing chargeable on the tenant, which would certainly affect the amount of the rent he would be willing to pay. The fifth claim is to be allowed for such additional parochial assessments as may become payable, it is not said when or where, in consequence of the recent decisions of this Court; upon which we will only say that we think the Court would have been well justified in refusing to permit it to form part of the case. In the sixth place, the appellants claim to be allowed a deduction in respect of their loss on the two branch lines before referred to. We think this cannot be allowed. If the rate in question had been imposed on land forming any part of the branch lines themselves, it is

clear that the circumstance of the receipts not equalling the rent,—in other words, that the line was worked at a loss,—could not have affected the rate; the occupation would have still been beneficial, in the sense in which that word is used, for the purpose of assessing the rate; and the rent, which, from whatever motive, the appellants found it worth their while to give, would have regulated the amount. This is not that case in the way in which it is sought to make this expenditure bear upon the rates assessed on any part of the main line; it is more like money laid out in the way of improvement, for which no deduction should be made. If the lessee of a coal-mine were to open roads through adjoining lands rented under a separate demise, in order to facilitate the access of customers to the mine, and so increase its profits, the expense of such roads would certainly not be an outgoing to be allowed for by the overseers. Two more questions are stated: the first as to the mode of ascertaining the tenants' profits, in order to their deduction from the rateable value. The respondents have taken the original value of the plant or moveable stock, and allowed 10*l.* per cent. upon it for these profits as well as the profits of trade. The appellants say that the more correct mode would be to ascertain them by a percentage on the gross receipts, and claim to have 15*l.* per cent. deducted from these on that account. We are very unwilling to withhold our aid in settling questions for the sessions of such novelty and difficulty as the railway rating must often bring before them; but we ought not to go beyond our province, and so perhaps mislead them. This question involves no principle of law, and we decline to answer it. The last is only raised by the respondents provisionally, in case any of the deductions claimed by the company should be allowed by us. But this has been done:—in ascertaining the tenant's profits, they have calculated the percentage on the original value of the moveable stock; but the sessions have found, that, at the time of the rate being made, the value had become less by 80,000*l.*; and the respondents contend that the percentage should properly be made on the smaller sum. This seems to us correct; they are to make the rate from year to year, or for whatever shorter period, conformably to the facts as they exist at the time of making it. They may not know, nor have any means of knowing, what the value was originally or in any former year. If, at the end of five or ten years, they are to be driven back to the original value, they may be equally required to ascertain it after an interval of a century. No hardship is inflicted

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on the appellants by this; they may, and they ought, as prudent owners, to keep up the stock at its original value, and in this very case they have claimed a deduction for doing so. If that claim were properly made, the original and the present value would be the same. Although, however, we thus answer this question in favour of the respondents, they cannot avail themselves of the decision so as to increase their assessment beyond its present amount. The consequence of the several decisions we have come to will be, the amendment of the rate in one or two particulars; but as the sums are ascertained by the sessions, this may be done, we presume, by the counsel, without remitting the case again to the sessions. Rate to be amended.

CHAPTER IV.

ON MANDAMUS.

WRITS of mandamus are now so frequently applied for in matters arising out of railway transactions, that a short account of this writ, and of the mode of obtaining it, seems to fall within the legitimate purposes of this work.

The writ of mandamus is a high prerogative writ, issuing in the Queen's name out of the Court of Queen's Bench, and directed to any person, corporation, or inferior court of judicature within the Queen's dominions, requiring them to do some particular thing therein specified, which appertains to their office and duty, and which the Court of Queen's Bench has previously determined, or at least supposes to be consonant to right and justice. If the party making the application has a right, a legal right, and no other specific legal remedy, the writ will not be denied: for his having a remedy in equity will not be considered as any ground of refusal. And even though he may have another legal specific remedy, if such remedy be obsolete, the mandamus will be granted. And it has been decided to be no objection to the granting a mandamus to do a particular act, that an indictment will also lie for the omission to do that act; for the indictment does not compel the doing of the act, and therefore is not equally effectual with the mandamus (*a*).

Thus it has been decided, that where an act authorised a justice to order a bridge to be pulled down, that provision afforded no answer to an application for a mandamus, when the object of the application was to compel the Company to rebuild the bridge according to the directions contained in the act (*b*).

(*a*) 5 Bac. Abr., tit. "Mandamus," 256, 7th ed. And see post, 528.

(*b*) *Reg.* v. *The Norwich and Brandon Railway Co.*, 15 Law J., Q. B., 24; 4 Railway Cases, 112.

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This writ is the proper remedy to enforce obedience to acts of Parliament and to the king's charters, and, in such cases, is demandable ex debito justitiæ (*b*).

The writ is granted on a suggestion contained in affidavits, which state all the facts necessary to shew the applicant's right to the writ; whereupon, in order more fully to satisfy the Court that there is a probable ground for such interposition (*c*), a rule is made (*d*), directing the party complained of to shew cause why a writ of mandamus should not issue; and if no sufficient cause be shewn, the writ itself is issued at first in the alternative, either to do the act, or signify some reason to the contrary; to which a return or answer must be made at a certain day (*e*).

(*b*) 5 Bac. Abr., tit. "Mandamus," 257, 7th ed.

(*c*) In a case in which, by agreement between the parties, an application was made for a mandamus, merely with a view to obtain the opinion of the Court, whether, on the construction of a private act, the proceeding by mandamus was the proper one, the Court stopped the argument, and refused to give any decision. *Reg.* v. *The Blackwall Railway Co.*, 9 Dowl. P. C. 558.

(*d*) In cases of emergency, a rule will be made absolute in the first instance: as, to compel the overseers of a parish to receive and maintain a child. *Ex parte Foundling Hospital*, 5 Dowl. P. C. 722.

(*e*) *Preliminary Proceedings to obtain the Writ.*]—When it is determined to apply for a writ of mandamus, the first step to be taken, in all cases where such a proceeding is practicable, is to require the party against whom the application is intended to be made to do the act sought to be enforced, and such request ought to be made to the persons whose duty it is to do the act, and not to a clerk or other officer; *Rex* v. *The Wilts and Berks Canal Co.*, 3 A. & E. 477; and in some cases it may be very desirable to give a written and explicit notice of the nature of the request, and that, in case of a refusal to comply with it, the applicant intends to apply for a writ of mandamus. The rule is, that a mandamus ought not to be moved for unless the party alleged to be in fault has known distinctly what he is required to do, so as to exercise an option whether he will do it or not. Per *Coleridge*, J., in *Rex* v. *The Brecknock and Abergavenny Canal Company*, 3 A. & E. 224. If an evasive answer, or a qualified refusal to do the act, be given, (*Rex* v. *The Trustees of the Northleach and Witney Roads*, 5 B. & Ad. 978), then some further application should be made, as it is always desirable that a direct refusal, or something equivalent, should be shewn. It is not necessary that the word "refuse," or any equivalent to it, should be used, but there should be enough to shew that the party with-

person to whom the writ is directed makes no
e is punishable by attachment. If, on the other

liance, and distinctly de-
t to do what is required.
Wilts and Berks Canal
l. P. C. 623; *Rex* v. *The and Abergavenny Canal* E. 223: *Reg.* v. *The Nor-Brandon Railway Co.*, 15 ., 24, Q. B.; 4 Railway . It has been observed ubject, "There may be a continued silence as well s;" Per *Littledale*, J., in *e Select Vestrymen of St.* , *Leicester*, 8 A. & E. so *Ibid.* 889: but see *Reg.* *tol and Exeter Railway* B. 162; and it has also sted, that, when a direct ithheld, the proper course ng is to give the parties a direct answer is required, e not giving it will be con-efusal. Per Lord *Den-* in *Rex* v. *The Brecknock wenny Canal Co.*, 3 A. & he objection, that no suf-and and refusal appears on t, must be taken when ewn, before the merits are *Reg.* v. *The Eastern Coun-ay Co.*, 10 A. & E. 545. ition precedent is required tute as a necessary pre-the application, a com-st be shewn. But where, visions of the statute, a be required by the rail-ny before they issue their nandamus may be applied h no bond has been tender-rty seeking compensation. *e North Union Railway* way Cases, 729.

The Affidavits.]—Great care is requisite in preparing the affidavits upon which the application for the writ of mandamus is founded, for the Court will not permit a second application to be made, if the first application should be refused in consequence of a defect in the affidavits. *Reg.* v. *The Manchester and Leeds Railway Co.*, 8 A. & E. 413; and see ante, 312. The only exception seems to be where the alteration is simply in the form of the title or jurat, so that the re-swearing the affidavit would clearly leave parties in the same situation. *Reg.* v. *The Great Western Railway Co.*, 5 Q. B. 601. The affidavit or affidavits should fully and explicitly state the facts which are essential to entitle the applicant to relief. Affirmative as well as negative matters should be stated positively; and parties should swear directly to their information and belief. It has been said to be insufficient for a party to allege, in his affidavit, that he "objects" to certain specified defective proceedings; nor is it sufficient to assert generally that a statute does not authorise a proceeding which has taken place; it should be stated how it fails to do so. *Rey.* v. *The Manchester and Leeds Railway Co.*, 8 A. & E. 416; and see ante, 313. If any written documents are important, copies should be annexed to the affidavits, and verified in the usual manner. If strong resistance is anticipated on the other side, and the matter in dispute be a question of fact or a matter of opinion, then it may be proper to corroborate and confirm the statement of such matters as are important by

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hand, he makes a return, and it be found either insufficient in law or false in fact, there then issues, in the second place,

the testimony of several deponents. In some cases, the affidavits may also be so framed as to anticipate and answer possible objections or arguments, which the other side may be expected to rely upon.

The Application for the Rule.]—The necessary affidavits having been made, the usual course is to move for a rule to shew cause why a mandamus should not issue.

The rule, if granted, is drawn up at the Crown Office, and copies are served upon the parties mentioned in the rule. If the rule is opposed, affidavits may be made in answer; and when cause is shewn against the rule, the affidavits made on both sides are referred to and commented upon by the counsel for the respective parties; and the Court will thereupon discharge the rule or make it absolute, as is mentioned in the text. If the matter, either of law or fact, be doubtful, the Court will in general grant the writ, in order that it may be more solemnly discussed upon the return. *Rex* v. *Bland*, Bull. N. P. 200. If the Court do not think right, upon discussion, to grant the writ in the form mentioned in the rule nisi, they may mould the rule in what manner they please, in order to meet the justice of the case. *Rex* v. *Leicester*, 4 B. & C. 891.

Costs.]—The rule may be made absolute, or discharged with or without costs, at the discretion of the Court. On the discharge of a rule for a mandamus, the Court generally gives the party shewing cause his costs. *Reg.* v. *Mayor of Bridgenorth*, 10 A. & E. 66; *Reg.* v. *Eastern Counties Railway*, 2 Q. B. 578. If the rule be made absolute, the Court will not always grant costs upon that motion, *Reg.* v. *Justices of Salop*, 6 Dowl. P. C. 34, except under particular circumstances; *Reg.* v. *Thames and Isis Commissioners*, 8 A. & E. 905, note (*b*); but the usual course is for the costs to abide the result, in which case the costs of the rule and writ will be allowed with the rest; *Rex* v. *Fall*, 1 Q. B. 636; and if the writ be obeyed without further contest, a distinct application must be made for them. Corner's Crown Prac. 225: see also Archbold's Prac. of the Crown Office, 286.

Form of the Writ.]—The rule absolute for the mandamus must be drawn up at the Crown Office, but need not be served; the attorney may then draw and ingross the writ, or instruct counsel to do so, or to settle it. Great care should be taken in drawing the writ, as an objection to it for want of form, or for any defect, may be made at any time; and even in a case where a return had been made to the first writ, and such return quashed for insufficiency, and a peremptory writ issued, and a return made thereto; upon the argument upon a rule nisi for an attachment against the defendants, for not obeying the peremptory writ, objections were taken to the form of the original writ, and the Court, after mature deliberation, quashed it, and the rule for an attachment was discharged. *Rex* v. *Corporation of Poole*, 10 Law Journ. 198, Q. B. The writ must correspond with the rule, as well with respect to the act to be done as with respect to the parties to

The Mode of obtaining the Writ.

a peremptory mandamus to do the thing absolutely, to which no other return will be admitted but a certificate of perfect obedience and due execution of the writ. The sufficiency of the return, in point of law, was formerly determined in a summary way upon motion; but, as to the truth of its allegations, in point of fact, it was a rule that this could not be investigated by any further proceeding on the mandamus; the complaining party having no remedy, in case the facts were untruly alleged, but to bring an action on the case for a false return. But by the 9 Anne, c. 20, in a mandamus for determining the right to a corporate office, and now, by 1 Will. 4, c. 21, in all cases of mandamus (*f*), the return may be pleaded to, or traversed by, the prosecutor, and the other party may reply, take issue, or demur; and the same proceedings may be had as if an action on the case had been brought for making a false return, and, after judgment obtained for the prosecutor, he shall have a peremptory writ of mandamus. So that now the writ of mandamus is assimilated to an action, and the more closely, because, by the same acts, it is also provided, that the prosecutor, if successful, shall recover damages,

whom it is to be directed; if it exceed the terms of the rule it may be quashed. Corner's Crown Prac. 226.

The writ consists of three parts:—1st, a statement by way of recital of the duty which ought to have been performed; 2ndly, a statement by way of recital of the demand and refusal to perform the duty, and the complaint thereof; 3rdly, the mandatory part, or command of the Court to perform the act of duty. See further on these points, Archbold's Prac. of the Crown Office, 210; Corner's Crown Prac. 227.

The Return.]—The return must either shew that the party has performed what by the writ he was commanded to do—or it must shew defects in the writ or previous proceeding not patent upon the face of it—or it must shew a good cause for not having obeyed the writ. See Archbold's Prac. of the Crown Office, and Corner's Crown Prac., where the practice relating to writs of mandamus is fully discussed.

(*f*) It has been decided that, not only in terms, but in spirit and intention, this statute embraces all writs of mandamus whatever. *Rex* v. *Fall*, 1 Q. B. 648. By sect. 4 of this statute, the Court may enforce the provisions of the Interpleader Act in proceedings by mandamus. See 1 & 2 Will. 4, c. 58, s. 8.

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to compel the defendants, who were an incorporated company, to re-instate and maintain part of a railway or tramroad made under the authority of certain acts of Parliament, which empowered them to make and maintain a railway, among other places, from Miry Stock to Churchway Engine. The statute empowered the company to receive rates of tonnage for goods carried along the railway.

It was contended on behalf of the company, that as, by the statute of incorporation, the railway was a public and not a private highway, the law had afforded a remedy by indictment, and that there was no instance of a mandamus having been before granted for such a purpose. On the other hand, it was said, in support of the application, that an indictment and mandamus might be concurrent remedies, and that the Court would enforce the remedy which was most speedy and effectual.

Abbott, C. J., said, "I have entertained considerable doubts during the discussion, whether the Court ought to grant a mandamus to compel the doing of an act, the omission to do which may be prosecuted by indictment. I am now, however, satisfied, by the authorities cited in the course of the argument, that there is no reasonable ground for that doubt. If an indictment had been a remedy equally convenient, beneficial, and effectual as a mandamus, I should have been of opinion, that we ought not to grant the mandamus; but I think it is perfectly clear, that an indictment is not such a remedy, for a corporation cannot be compelled by indictment to re-instate the road. The Court may, indeed, in case of conviction, impose a fine, and that fine may be levied by distress; but the corporation may submit to the payment of the fine, and refuse to re-instate the road; and, at all events, a considerable delay may take place. The remedy, therefore, is not so effectual as that by mandamus. I am therefore of opinion, that the circum-

stance of the corporation being liable to an indictment, is no objection to the granting of a mandamus. The writ should be, to reinstate and lay down again, but not to maintain the tram road" (*k*).

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But the leading case on the point now under consideration is, *Regina* v. *The Eastern Counties Railway Company* (*l*). In that case an application was made for a mandamus, to be directed to the Eastern Counties Railway Company, commanding them to proceed to make and complete a railway from London to Norwich and Yarmouth, passing by Romford, Chelmsford, Colchester, and Ipswich, according to the provisions of two acts of Parliament, and especially to set out and define the line of the railway, particularly that part thereof between Colchester and Norwich, and Norwich and Yarmouth, and to proceed to purchase the lands necessary to the making and completing the railway, and lying between Colchester and Norwich, and Norwich and Yarmouth.

The rule was obtained on the affidavit of one Symonds and others. Symonds stated, that he was the owner of a farm in Suffolk; that the lines laid down in the amended plan of the railway intersected his farm. That, at the expiration of two years from the passing of the act, the company had not agreed for deponent's property, or any of the other properties specified in the schedule, situated in Suffolk and Norfolk, saving the properties of a few persons who were

(*k*) It seems, however, that in general the proper mode of enforcing an obligation to repair roads is to proceed by indictment, because, if the Court entertained applications for writs of mandamus in such cases, it might be required to try questions of guilty or not guilty on the state of the roads, and all questions affecting their liability: *Reg.* v. *The Trustees of the Oxford and Witney Turnpike-roads*, 12 A. & E. 427. Lord *Denman*, C. J., has also recently said, concerning *Rex* v. *The Severn and Wye Railway Co.*, that it was generally believed that it went far enough. See *Reg.* v. *Gamble*, 11 A. & E. 72.

(*l*) 10 A. & E. 531; S. C., 2 Railway Cases, 260.

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agreed with before the act passed. He then referred to the special act, and stated, that the year allowed thereby for setting out the line was now very near expiring, and that the line had not yet been set out on any of the lands required in Suffolk and Norfolk. That the deponent offered no opposition to the act, from a belief that the communication to be established between Norfolk and London would be a great benefit to himself, and to the whole county of Norfolk. That he was suffering great inconvenience and prejudice in the enjoyment of his property, from the uncertainty of the line which the railway was to take; and that, unless the line, as described in the parliamentary plan, were carefully revised, and many needful deviations fixed and determined, and the whole line, or considerable portions thereof, fixed and defined anew before the 27th July, 1839, it would be difficult, or impossible, to carry out the railway through Suffolk and Norfolk, according to the line originally laid down. That of the capital of 1,600,000*l.*, which the company were authorised to raise, 600,000*l.* had already been paid up; and that the company had also borrowed considerable sums, and had therefore ample means of defraying the expense of setting out the whole line from London to Norwich and Yarmouth, and paying for all the properties required for it; but that they had expended all that had come into their hands on the part of the line between London and Colchester, except sums not exceeding 1500*l.*, paid for lands in Norfolk and Suffolk. That the company had entered into several large contracts for the completion of the line between London and Colchester, and for providing a carrying establishment for the working thereof when completed; and that they were about to enter into other contracts for the same purposes; but that they had not yet been able to make, nor did they contemplate making, any provision for setting out, executing, or working the line

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beyond Colchester; and that it was the intention and determination of the company not (unless compelled) to carry the railway farther than Colchester. That deponent consented to the enlargement of the company's power under the last statute, on the faith that the line would be set out, and that the parts of his property required for the railway would be paid for within the enlarged time.

There were also affidavits by other parties, including proprietors, containing statements to shew that the special act was obtained upon evidence, in part, of the advantages which would accrue to Norfolk and Suffolk from the completion of the railway; and that another scheme for a railway from London to Norwich had been abandoned in favour of the scheme of the present defendants. There was also an affidavit by a civil engineer, stating that he never knew an instance of a railway being executed without numerous deviations being found requisite; and that it was highly probable that numerous deviations would be necessary in the present case; and that it was absolutely necessary that the setting out the same should be commenced without delay. Other statements were added, to shew a demand and refusal; and that the company had, in effect, abandoned the intention of carrying the railway beyond Colchester.

In answer to these affidavits, one of the directors of the railway stated, that he was advised and believed, that the power to make deviations rested in the discretion of the directors; that he had been informed by an engineer, and believed, that, in making the line through Suffolk and Norfolk, deviations would not be necessary; that the directors had proceeded to the best of their judgment and ability; that they believed the best course for the advantage of the shareholders and public to be, to make the line continuous from London to the interior of the districts through which the railway was to pass, finishing and opening por-

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tion by portion; that they intended opening the line from Romford during the present June (1839), and to proceed in making the line between Romford and Chemlsford; that it was customary to apply from time to time to Parliament for an extension of time; that deponent believed that the company would not be able to complete the line without raising further sums of money by the authority of Parliament; that he believed it would be imprudent to purchase further lands, inasmuch as all the available funds would be employed with more benefit to the public in completing the works already in hand; that, to purchase further lands, it would be necessary to apply to Parliament (first obtaining the consent of the shareholders) for power to raise money by loan or otherwise; that, if the directors were interrupted in gradually completing the line from London towards the interior of the districts, the works at present in operation between London and Colchester must be discontinued. Statements were added, to shew that the plan, at present contemplated by the directors, was generally approved of by the shareholders.

The engineer of the company deposed, that, although deviations from the line of railway were frequently made, and some had been made in the Eastern Counties Railway, and others might be advisable, yet none would be necessary; and that it would not be difficult to carry out the railway to Suffolk and Norfolk in the precise line laid down.

Upon this state of facts, the Court of Queen's Bench decided that a return ought to be made to the writ of mandamus; and, in delivering the judgment of the Court, Lord *Denman*, C. J., observed—"The questions involved in this application are of much novelty, and of, at least, equal importance. Because, as, on the one hand, much mischief may ensue, if this Court should improvidently injoin the performance of things impracticable or improper; so, on

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the other, is there no higher duty cast upon this Court than to exercise a vigilant control over persons entrusted with large and extensive powers for public purposes, and to enforce, within reasonable bounds, the exercise of such powers in compliance with such purposes; and the more so, as we are not aware of any other efficient remedy. The principles upon which these powers are conferred by the Legislature upon undertakings of this description are now so fully understood, that it is not needful to do more than generally to refer to them." "The reasons, also, which regulate the practice of this Court, in regard to writs of mandamus, are very plain and intelligible. Its interference is occasioned by inferior courts or persons refusing to proceed in some course prescribed by law, and not in consequence of any misapprehension or error in that course, provided they have entered upon it: and, accordingly, if it had appeared that the company were substantially complying with the terms of their undertaking, there would have been, at once, a satisfactory answer to the application. Now, the objects and purposes for which this company has been incorporated and empowered, or, in the words of one of the cases cited, what the Legislature has empowered and compelled them to do and to submit to, are too clear to admit of any doubt. The title of the act itself, 'for making a railway from London to Norwich and Yarmouth;' the benefits recited in the preamble as likely to result from opening a communication, not only between the towns there more particularly enumerated, but also between the metropolis and the eastern districts of the kingdom, from which it is alleged that 'great public advantage' would result, the eastern terminus being a seaport of greater consequence than any in those eastern districts; together with a minute description of the whole line, and a particular enumeration of all the places through which it is to pass, precludes all question on this matter.

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We consider it to be equally undeniable, that, to carry the railroad through a portion only of the described line, such as a third, or a half, is a nominal, and not a real compliance with the meaning of the act of Parliament.

"We are aware, that we were met, in this part of the argument, by remarks upon the difficulty or impossibility attending the execution according to the prescribed terms. We confess, however, that we should have felt more pressed by observations of this nature if we had not observed in the preamble of the act, which we must consider to have been proved, that certain persons therein named (and we consider the obligation as extending to their successors, who, from time to time, may constitute the company) were 'willing at their own costs and charges to carry the said undertaking into execution.' Such difficulties, be they more or less, should have been duly estimated before the undertakers pledged themselves to the execution, for the sake of obtaining such large and extensive powers as most certainly are vested in them for the purposes already mentioned. It was urged, also, that the time for completing the work is not yet elapsed, and the time for determining their line not yet arrived. We were also referred to parts of the act (and particularly to the clause revesting the land taken for the line in the proprietors on each side), as indicating that the non-completion of the work was obviously within the contemplation of the legislature. We think, however, that a failure of the enterprise upon experiment and trial (which may, of course, happen to any scheme, however plausible or promising) is widely different from a design to abandon one part of the line and to execute another, which it may be found more easy and profitable to accomplish. Another argument against our interference was drawn from the power given to a general meeting of the company to decide upon the expediency of all measures to be adopted for exe-

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cuting the act of Parliament. But we must consider the real nature of this application. It is not a complaint by the majority of the proprietors against the governing body, but by a minority against the conduct of the company itself, which they charge substantially with a breach of faith towards them, by stopping short of a bonâ fide execution of that purpose, which induced them to become subscribers.

"They strongly urge upon us the consideration that all the sacrifices which they may have made in furtherance of their own interests may go unrequited, or even may entail upon them additional loss by giving advantages, in which they cannot share, to their competitors in turning property to account. To say that a majority of the whole body are satisfied with the dividends they now receive, and unwilling to risk more expenditure, is obviously no answer to them, or to the public which created these great powers for different purposes, or to Parliament, which was induced to grant them, by the promise of public benefits much more extensively diffused.

"We now come to consider whether, so far as appears to us, there be a bonâ fide purpose of completing the work. And, upon this part of the case, after making every possible allowance for the discretion to be exercised by the company as to the different degrees of exertion to be made in different parts of the line, it is impossible not to be forcibly struck by the different state of things beyond Colchester, and between that town and London. Beyond, we can discover no activity; whereas between London and Colchester we are given to understand that the whole line is in a state of great forwardness. The procuring land for the line is usually, we believe, as reasonably might be expected, the first step in these cases. And yet, in this preliminary measure, the preparation beyond Colchester we perceive to be comparatively small and insig-

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nificant. Moreover, when we consider how indispensable for purposes of this description is the compulsory power of procuring land (because without it the obstinacy or caprice of a single individual may put a stop to the work at once), we cannot help thinking that the answer of the company to a request, 'that they would set out and define their line deviating from the line laid down in the plans' (a mere precautionary measure to secure compulsory purchase), 'that no deviation is necessary,' is much more consistent with a determination not to proceed, than a well-founded belief that the original plan could have been laid down with such perfect accuracy as, in working, to require no deviation at all. Upon the whole, without coming to any final decision, we think the case is involved in sufficient doubt to require a return to the mandamus, and that the writ should go for that purpose."

A writ of mandamus accordingly issued, and the defendants made a return, the substance of which was, that they had exercised a reasonable discretion, option, and judgment, in making and completing the railway; that they had completed certain large portions of the works, and purchased a large portion of the land necessary to complete the railway; that, by making calls, and borrowing money under the provisions of the Railway Acts, they had raised the sum of 953,045*l.*, the whole of which, except 9892*l.*, had been expended in making the said portion of the railway and purchasing the said land; and that the said sum of 9892*l.*, together with the residue of the monies which the company were by the acts of Parliament empowered and authorised to raise, borrow, and take up, demand, or receive, for the purpose of making and completing the railway, was wholly inadequate and insufficient to purchase the lands, and complete the railway in manner and form as by the writ of mandamus the defendants were commanded.

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This return seemed to have brought the important point now under consideration, to an issue; but, on motion to quash the return, and for a peremptory mandamus, it appeared, that the writ was defective, inasmuch as it did not support the allegations contained in the affidavits which were made when the rule for the writ was obtained; and the whole matter consequently fell to the ground.

But, in discharging the rule, the Court again asserted its power to interfere by mandamus, in the following language: —"We were told, that our power to issue a writ of mandamus in any such case is at least doubtful, and were properly reminded, that the form and method of proceeding may prevent our judgment from being revised by any court of error (*m*), a consideration which certainly ought to induce great caution in assuming jurisdiction, but cannot justify us in declining it, where the law has lodged it with the Court. We have no more right to refuse to any of the Queen's subjects the redress which we are empowered to administer, than to enforce against them such powers as the constitution has not confided to us. It was urged, that our mandamus to compel obedience to an act of Parliament implying a disobedience at present, the prosecutor may indict, and, having that remedy, does not require the extraordinary process of mandamus. This argument appears to prove too much, as it would prevent the Court from acting in all cases where an act of Parliament is contravened. Besides, the indictment does not compel the performance, but only punishes the neglect of duty: though it was thought proper to remind us that mandamus might do no more, for that disobedience would only bring the party into contempt, and expose them to attachment, which would but end in individual suffering, and leave the required act still undone; yet

(*m*) But see now stat. 6 & 7 Vict. c. 67, ante, 526.

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we are not in the habit of supposing that persons required to obey the Queen's writs issuing from this Court, will incur the penalty of contempt for contumacy, or be advised to evade the known and ancient process of the law.

"Objections were also raised to a mandamus for insuring the execution of these works. Under this head it was, in effect, insinuated, that similar acts of Parliament entail no duties whatever on those who may procure them; that they do but offer a boon which the projected company may accept or reject, or partially accept and partially reject, at their sole will and pleasure. The assertion, appearing in them all, that they have provided the means of executing the intended works, was treated as no proof, even primâ facie, that they have sufficient funds for that purpose. The provision for disabling the company from taking land, after the lapse of a certain term, was put forth as a proof that they had full power to proceed with their works or abandon them, without any regard to the interest of others. Some decisions of the Court of Chancery, which have injoined companies not to take possession of certain lands peculiarly circumstanced, were called inconsistent with any power in this Court to require that possession should be taken of lands under circumstances entirely different.

"We think it right so far to advert to these remarks, that we may wholly disavow them as having at all conduced to the judgment which we are about to pronounce. When we made the rule absolute, we expressed our conviction that the case was, in some respects, new, and that its circumstances admitted of some doubt whether our power ought to be applied to them. We shall keep our minds open for the discussion of all such doubts on every proper occasion; but we do not yield to them, nor is it necessary to advert to them in coming to our present decision. We neither hold the Court incompetent to enforce execu-

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tion of an act under the circumstances disclosed to us in the affidavits, nor think any of the reasons which we have enumerated are conclusive against making our mandamus peremptory. Those points will be as much open to argument hereafter as they were when the rule was obtained. But, it will be perceived, on adverting to what was said on the former occasion, that we considered the facts then stated to afford strong evidence, that the company, having obtained an act for a particular purpose, had stopped short of effecting it, and satisfied themselves with doing less than one half of what they had undertaken to do, and represented themselves to be capable of doing. It was by that undertaking and representation that they obtained the act, and the great powers of occupying land and raising money which it bestowed. We could not recognise their right to say to those who had contracted with them, and to the public, 'Our undertaking does not bind us, because our statements were untrue: we have nothing to consider but the pecuniary interests of the Company, and claim to exercise an unlimited option over these works, and every part of them.' The rule was made absolute, and the writ was directed to go, on the supposition that they had no intention to proceed bonâ fide with their works, and had on the contrary abandoned all intention to complete them. But the prosecutors of the writ have stated no such facts. What they state may raise a suspicion on the subject, but falls far short of proof."

And in a still later case than the foregoing, a peremptory mandamus was issued to compel the trustees of a turnpike road to fence a road made by them on the land of a private individual; and the Court decided, that the liability to fence the road, imposed on all trustees of turnpike-roads by stat. 4 Geo. 4, c. 95, s. 66, was not excused by a return which alleged that the trustees had no funds to make the fences.

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It was said, by the Court, that, "if the trustees had not adequate funds to make the fence, they ought not to have made the road (*n*)."

The principle, therefore, seems now to be established, that, if a company of individuals, whether incorporated or not, obtain an act of Parliament for executing public works, which are capable of being executed, and the works are commenced, the Company are bound to proceed with the whole undertaking, under the penalty of being compelled so to do by a writ of mandamus.

Writs of mandamus have also been issued, requiring public companies to perform duties imposed upon them by acts of Parliament in the following instances:—To repair and amend the banks and bridges of a river course (*o*); to make alterations and amendments in sewers, to prevent an offensive sewage from being discharged into a floating harbour (*p*); to restore a turnpike-road carried over a railway by a bridge, to its former width (*q*); to excavate a road over which a bridge had been built, so as to leave a headway of sufficient height under the bridge (*r*); to make proper watering places for cattle in lieu of ancient watering places destroyed by the railway works (*s*).

In all the foregoing cases, which are given by way of illustration only, the writs issued to compel the execution of en-

(*n*) *Reg.* v. *The Trustees of Luton Roads*, 1 Q. B. 860.

(*o*) *Reg.* v. *The Bristol Dock Co.*, 2 Q. B. 64; S. C., 1 Railway Cases, 548; 2 Id. 599; ante, 388; *Rex* v. *The Ouze Bank Commissioners*, 3 A. & E. 544.

(*p*) *Rex* v. *The Bristol Dock Co.*, 6 Barn. & Cress. 181; ante, 387.

(*q*) *Reg.* v. *The Birmingham and Gloucester Railway Co.*, 2 Q. B. 47; S. C., 2 Railway Cases, 694; ante, 375; *Reg.* v. *The London and Birmingham Railway Co.*, 1 Railway Cases, 317; ante, 374. And see the other cases, ante, 360.

(*r*) *Reg.* v. *The Manchester and Leeds Railway Co.*, 3 Q. B. 528; S. C., 1 Railway Cases, 523; 2 Id. 711; ante, 372; *Reg.* v. *The Eastern Counties Railway Co.*, 2 Q. B. 569; S. C., 3 Railway Cases, 22; ante, 377.

(*s*) *Reg.* v. *The York and North Midland Railway Co.*, 14 Law J., Q. B., 277; ante, 396.

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ınd other similar works. We now turn to another
es. We have seen, in a former part of this work (*t*),
tutes provide that railway companies shall, in cer-
issue a warrant to the sheriff, requiring him to
jury to assess the compensation due to persons
claims in respect of damage caused by the execu-
railway works. If the company should make
issuing such a warrant, when duly required so to
t of mandamus is the suitable remedy (*u*). So,
riff, or other officer who holds the inquisition,
allow the inquiry to proceed, upon the ground
applicant is not entitled to compensation, man-
l lie to compel the due execution of the pre-
So, if the presiding officer refuses to allow costs
entitled to receive them, a mandamus will be
equiring the costs to be allowed (*y*).
also the practice (*z*) to enforce the payment of
ion money awarded by a jury, by resorting to a
ındamus (*a*); but, in a late case, *Corrigal* v. *The*
d Blackwall Railway Co. (*b*), the Court of Com-
decided, that an action of debt may be brought
isition and verdict, and that remedy must now be
in such cases; and, accordingly, in a subsequent

60, 294.
nerous instances in the
ompensation cases, ante,
As to when the cause of
ses, see *Thicknesse* v.
er Canal Co., 4 M. &
, 236.
v. *The London and*
ilway Co., 3 Q. B. 744;
ut if a statute does not
ioval of proceedings by
ante, 306), the Court
ectly bring them under
andamus: *Rex* v. *The*
e West Riding of York,
1 A. & E. 563.

(*y*) *Rex* v. *The Justices of the City of York*, 1 A. & E. 828; ante, 255; *Rex* v. *Gardner*, 6 A. & E. 112; ante, 256; *Reg.* v. *The Sheriff of Warwickshire*, 2 Railway Cases, 661; ante, 258.

(*z*) See ante, 324.

(*a*) *Rex* v. *The Nottingham Old Waterworks Co.*, 6 A. & E. 355; *Reg.* v. *The Trustees of Swansea Harbour*, 8 A. & E. 439; *Reg.* v. *The Deptford Pier Co.*, 8 A. & E. 910.

(*b*) 5 Man. & G. 219.

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case, where a statute, empowering the Hull and Selby Railway Company to build a bridge over the Ouse, recited that the building of such bridge might diminish the tolls received at a neighbouring bridge belonging to another company, and enacted, that, if there should be an annual decrease in the tolls of the last-mentioned bridge, the railway company should forthwith pay the bridge company a sum equal to ten years' purchase of such annual decrease; and the compensation was claimed: it was decided, that debt lay against the company for the amount; and that a mandamus to pay was not a more effectual remedy, and, therefore, ought not to be granted (*c*).

Where a sum of money was awarded to a creditor by an arbitrator, a mandamus lies to compel the company to pay the amount found to be due, where it appeared that, by the statute incorporating the company, the creditor was unable to issue execution against the individuals who formed the company, or against their effects (*d*). But if a statute directs that costs shall be taxed and levied in the manner pointed out, it will be premature to apply for a mandamus before the costs are taxed, and an attempt made to levy them in the prescribed manner (*e*). So, where a company was incorporated, with power to make calls, and to sue and be sued in the name of their treasurer, or any director, and an action was brought against the treasurer, and judgment entered up against the company, who appeared to have no assets, a mandamus was refused to compel the company to pay the amount recovered by the judgment, upon the ground, that, as the plaintiff had entered up his judgment, not against the public officer, but against the company, he was in a situation to enforce the ordinary

(*c*) *Reg.* v. *The Hull and Selby Railway Co.*, 6 Q. B. 70; and see ante, 324.

(*d*) *Rex* v. *The St. Catherine's Dock Co.*, 4 B. & Ad. 360; *Corpe* v. *Glyn*, 3 B. & Ad. 801. And see 6 Q. B. 76, note (*d*).

(*e*) *Reg.* v. *The London and Blackwall Railway Co.*, 15 Law J., Q. B., 42.

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legal remedy of an execution against the goods of the company. It was also decided, that the Court would not order a mandamus to go, merely because, under the circumstances, the execution might produce no fruits (*f*). And, in this case, the Court intimated a very strong opinion, that a mandamus would lie to compel the company to proceed to enforce the payment of calls, if it were shewn that judgments recovered against the company were unsatisfied for want of assets. On this important point of the case, Lord *Denman*, C. J., said:—"We might, perhaps, if the facts had warranted us, have made the rule absolute on them for the latter part, the making a call on the shareholders. For this is not the case of an ordinary corporation possessing or supposed actually to possess corporate property, and with which individuals contract on the faith of such present possession; but a corporation with a power of creating a future corporate property, from time to time, out of the private assets of its individual members, and with which contracts are made on the faith that an honest exercise will be made of such power, when necessary. If, therefore, it were clearly establised that they were evading the payment of their debts, and the due satisfaction of judgments recovered against them, on the ground that they had no corporate assets actually in possession, we should not, perhaps, go beyond the principle which regulates our extraordinary interposition by mandamus, if we compelled them to exercise that power with which the legislature has trusted them for this very purpose, and to put themselves in funds to answer the demands of their creditors. We think it right to state thus much, to guard against a misconstruction of our present judgment, and wishing to leave the Court entirely unfettered, should such a case as we have supposed be brought before us. But, in the case now under consideration, it was distinctly admitted

(*f*) *Reg.* v. *The Victoria Park Co.*, 1 Q. B. 288. See also the remarks made on this case, ante, 128.

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by the counsel for the rule, that a mandamus to make calls was unnecessary, because they had already been made to a sufficient extent; and it also appeared, that practical difficulties might arise from the present state of the corporation, in attempting to obey a mandamus so couched."

But the Court will not, in any case, grant a mandamus to enforce the general law of the land, which may be enforced by action (*g*). Thus, in a case where a railway company were common carriers, and therefore liable to carry all goods if they had room and means (*h*), a mandamus was refused to compel them to convey goods, although they had agreed with certain persons to carry their goods to the exclusion of all others (*i*); it appearing that there was no clause in their act of incorporation which required them to carry all goods offered for conveyance. And it has been said, that the Court will never grant a writ of mandamus except for public purposes, and to compel the performance of public duties. On this ground, a mandamus was refused to compel the Governor and Company of the Bank of England, at the instance of one of its members, to produce their half-yearly accounts, for the purpose of declaring a dividend (*j*); and, in like manner, the writ was refused to require a private trading company, acting under a royal charter, to permit a transfer of stock to be made in

(*g*) But if part of an injury for which a party seeks compensation has been done under the authority of a statute, the proper remedy for that part is by mandamus, and not by action at law. *Reg.* v. *The North Midland Railway Co.*, 2 Railway Cases, 1; ante, 195. See also *Elwell* v. *The Birmingham Canal Company*, 6 Law Times, 434.

(*h*) See ante, 458.

(*i*) *Ex parte Robins*, 7 Dowl., P. C., 566.

(*j*) *Rex* v. *The Bank of England*, 2 B. & Cr. 620. In *Rex* v. *The Master and Wardens of the Merchant Tailors' Co.*, 2 B. & Ad. 115, an application made by members of a corporate body for a mandamus to inspect the documents of the corporation was refused, it not being shewn that such inspection was necessary, with reference to some specific dispute or question depending on which the applicants were interested.

their books (*k*). Some of the modern cases already cited, in which the writ has been granted (*l*), seem to break in upon the two last-mentioned decisions, and it appears that the remedy by mandamus is now more extensively applied than it was formerly.

Other Cases in which Writs of Mandamus have been issued.

Lastly, it may be observed, that writs of mandamus must be applied for within a reasonable time after the injury has been sustained (*m*). But, in some cases, where compensation is claimed, it is necessary to wait until all the damage has been sustained, and then a jury may assess compensation for the whole (*n*).

(*k*) *Rex* v. *The London Assurance Co.*, 5 B. & Ald. 899.

(*l*) And see *Rex* v. *The Worcester Canal Co.*, 1 Man. & Ry. 529; ante, 126, n. (*o*).

(*m*) *Rex* v. *The Stainforth and Keadby Canal Co.*, 1 M. & S. 32; *Rex* v. *The Commissioners of Cockermouth Inclosure Act*, 1 B. & Ad. 378; *Reg.* v. *The Leeds and Liverpool Canal Co.*, 11 A. & E. 316.

(*n*) *Ex parte Parkes*, 9 Dowl., P. C., 614. When a jury are not entitled to assess prospective damages, see *Lee* v. *Milner*, 2 M. & W. 824; ante, 203; *Thicknesse* v. *The Lancaster Canal Co.*, 4 M. & W. 472; ante, 236.

CHAPTER V.

ON INJUNCTION AND OTHER PROCEEDINGS IN EQUITY.

An injunction is a prohibitory writ, issuing out of Chancery, to restrain the defendant from using some legal right, the exercise of which would be contrary to equity and good conscience; or from doing some act inconsistent with the admitted or probable legal rights of the complainant, and with the due preservation of the property affected by the act sought to be restrained.

Injunctions are of two kinds. An injunction of the first kind is grantable as an order of course, without reference to merits, upon the defendant's making default in appearing &c. An injunction of the second kind is, on the contrary, always granted upon merits, and may, under circumstances, be granted at any stage of a suit. An injunction of the first kind is properly called a common injunction, and is that which is most generally obtained in suits where the object is to stay proceedings at law. An injunction of the second kind is called a special injunction, because it is granted upon special application, and not as an order of course.

In practice, the special injunction may be considered as subdivisible into two kinds, the first of which is grantable in certain urgent cases before appearance, and even without notice to the defendant, upon the merits shewn by the ex parte statement of the plaintiff; and injunctions of this kind are called ex parte injunctions. The second kind of special injunction is only granted upon the merits shown on both sides (*a*).

(*a*) Drewry on Injunctions, Introd. vi.

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Ex parte injunctions are applied for in cases of waste, and similar acts of injury to property, and they are frequently resorted to for the purpose of restraining railway companies from doing illegal acts. The general principle by which equity is guided in administering such relief, appears to be this, *i. e.* that, where a company go beyond the powers which the Legislature has given them, and interfere with the property of individuals, it is the duty of the Court to interfere, for the purpose of strictly keeping the company within those limits which the Legislature has thought proper to prescribe for the exercise of their powers (*b*).

Lord *Cottenham*, C., in one of the earliest applications for an injunction against a railway company (*c*), observed upon this subject, "I am not at liberty, (even if I were in the least disposed, which I am not), to withhold the jurisdiction of this Court, as exercised in the first case in which it was exercised, that of *Agar* v. *The Regent's Canal Company*, (Cooper's Reports, 77), where Lord *Eldon* proceeds simply on this,—that he exercised the jurisdiction of this Court for the purpose of keeping these companies within the powers which the acts give them; and a most wholesome exercise of the jurisdiction it is; because, great as the powers necessarily are, to enable the companies to carry into effect works of this magnitude, it would be most prejudicial to the interests of all persons with whose property they interfere, if there were not a jurisdiction continually open and ready to exer-

(*b*) See *Webb* v. *The Manchester and Leeds Railway Company*, 4 My. & Cr. 116; 1 Railway Cases, 576; ante, 394. Parties whose private rights are injured must apply to the Courts for redress, and they may not take the law into their own hands, and determine and enforce the mode and manner in which they would stop illegal proceedings. See *The London and Brighton Railway Company* v. *Blake*, 2 Railway Cases, 322; ante, 384.

(*c*) *The River Dun Navigation Company* v. *The North Midland Railway Company*, 1 Railway Cases, 153.

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cise its power, for the purpose of keeping them within that limit which the Legislature has thought proper to prescribe for the exercise of their powers. On that ground I should never be reluctant to entertain any such application. I think it most essential to the interest of the public, that such jurisdiction should exist, and should be exercised whenever a proper case for it is brought before the Court, otherwise the result may be, that, after your property has been taken and destroyed,—after your house has been pulled down, and a railway substituted in its place, you may have the satisfaction, at a future period, of discovering that the railway company were wrong. It would be a very tardy recompense, and one totally inadequate to the injury of which the party has to complain; and individuals would be made to contend with companies who often have vast sums of money at their disposal, and that too, not the money of the persons who are contending. It is a most material point to consider, when you enter into a contest with an individual, whether he is spending his own money, or money over which he has a control, or in which he has comparatively a small interest. If these companies go beyond the powers which the Legislature has given them, and in a mistaken exercise of those powers interfere with the property of individuals, this Court is bound to interfere. That was Lord *Eldon's* ground in *Agar* v. *The Regent's Canal Company*: and I see no reason whatever to depart from the rule there laid down and acted upon; but then, of course, it must be a case in which the Court is very clearly of opinion, that the company are exceeding the powers which the act has given them."

In accordance with the doctrine which is thus clearly laid down, injunctions have been obtained against railway companies in the following instances, *i. e.* where lands are sought to be taken compulsorily, after the time limited by

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the Legislature, or lands not authorised to be taken (*d*); where an entry has been unlawfully made on lands authorised to be taken without paying the price (*e*); where roads, bridges, stations, or other works are constructed contrary to the stipulations contained in the railway acts (*f*); where proceedings are commenced to take lands, or execute works, contrary to an agreement previously made between the parties (*g*); where works are without authority constructed, which have a direct tendency to injure adjoining lands (*h*); where roads are improperly obstructed or interfered with by depositing materials thereon (*i*); and where more damage is done in carrying on the works, than the necessity of the case requires (*j*). In all such and similar cases the remedy by injunction is applicable.

It has been said in some of the earlier cases, that, before a court of equity will interfere by injunction, the party who applies for this summary relief must clearly shew, that, in the proceedings complained of, there is something in

(*d*) *The River Dun Navigation Company* v. *The North Midland Railway Company*, 1 Railway Cases, 135.

(*e*) *Hyde* v. *The Great Western Railway Company*, 1 Railway Cases, 277; *Robertson* v. *The Great Western Railway Company*, 1 Railway Cases, 459; *Jones* v. *The Great Western Railway Company*, 1 Railway Cases, 684.

(*f*) *Kemp* v. *The London and Brighton Railway Company*, 1 Railway Cases, 495; *Bell* v. *The Hull and Selby Railway Company*, 1 Railway Cases, 616; *Gordon* v. *The Cheltenham and Great Western Railway Company*, 2 Railway Cases, 812, ante, 362; *The Attorney-General* v. *The Eastern Counties Railway Company*, 2 Railway Cases, 823; ante, 362; *The London and Brighton Railway Company* v. *Cooper*, ante, 392; *Lord Petre* v. *The Eastern Counties Railway Company*, ante, 361; *Coates* v. *The Clarence Railway Company*, 1 Russ. & My. 181; *Manser* v. *The Northern and Eastern Counties Railway Company*, 2 Railway Cases, 380; ante, 369.

(*g*) *Lord Petre* v. *The Eastern Counties Railway Company*, 1 Railway Cases, 462: see post, 558.

(*h*) *Dawson* v. *Paver*, 4 Railway Cases, 81.

(*i*) *Semple* v. *The London and Birmingham Railway Company*, 1 Railway Cases, 480.

(*j*) *Manser* v. *The Northern and Eastern Counties Railway Company*, 2 Railway Cases, 380; ante, 369.

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the nature of irreparable spoil or waste, something more than a mere trespass, for which there is a remedy at law (*l*); but this doctrine has not been adopted in modern cases (*m*).

Legal rights in dispute are sent to be decided by a court of law.

If it appears, when the injunction is applied for, that any legal rights are in dispute between the parties, the Court will order the question to be tried in a court of law. Lord *Cottenham*, C., has said upon this point:—"The course I have always adopted in cases where the question turns upon a legal right, is, to put the parties in a situation to try, as quickly as possible, that legal right, and to protect the property to be affected, until the legal right be ascertained. If there be equitable grounds on which the jurisdiction of this Court ought to be withheld, that is a subject-matter connected solely with the jurisdiction of this Court (*n*)." And in determining whether there ought to be a proceeding at law, before the injunction is granted, or whether directions shall be given to proceed at law, as a condition on which the injunction issues, the Court has regard to the circumstances of each case. Sometimes it finds it most subservient to the justice of the case to grant the injunction at once; but the party who has obtained it, is put on terms of bringing an action to support the right, which has appeared so strong to a court of equity, that it has acted on it at the time, but still required the corroboration of the decision of a court of law (*o*); and sometimes, from the great inconvenience, and at other times from the extreme doubt, the Court considers

(*l*) See *The River Dun Navigation Company* v. *The North Midland Railway Company*, 1 Railway Cases, 145; *Mouchet* v. *The Great Western Railway Company*, 1 Railway Cases, 567.

(*m*) See *The North Union Railway Company* v. *The Bolton and Preston Railway Company*, 3 Railway Cases, 355.

(*n*) *Kemp* v. *The London and Brighton Railway Company*, 1 Railway Cases, 504.

(*o*) *Bell* v. *The Hull and Selby Railway Company*, 1 Railway Cases, 616; *The Clarence Railway Company* v. *The Great North of England Railway Company*, 2 Railway Cases, 763.

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it best that the injunctions hould be suspended until the right at law be determined (*p*). In *The Earl of Ripon* v. *Hobart* (*q*), Lord *Brougham*, C., summed up the rule applicable to such cases (*r*) in the following language:—"If the thing sought to be prohibited is in itself a nuisance, the Court will interfere to stay irreparable mischief, without waiting for the result of a trial; and will, according to the circumstances, direct an issue, or allow an action, and, if need be, expedite the proceedings, the injunction being in the meantime continued (*s*). But where the thing sought to be restrained is not unavoidably and in itself noxious, but only something which may, according to circumstances, prove so, the Court will refuse to interfere until the matter has been tried at law, generally by an action, though, in particular cases, an issue may be directed for the satisfaction of the Court, where an action could not be framed so as to meet the question." So, in some cases, the Court, in consideration of the great inconvenience and delay which will be caused by granting an injunction, will put the parties under terms to obey the order of the Court, and make it a part of the order, that, if default is made in complying with the order, the injunction shall issue (*t*). In such cases, the Court will exercise its discretion according to circumstances; and although there may have been an infraction of the law it will endeavour to do substantial justice to one party

(*p*) *Gordon* v. *The Cheltenham and Great Western Railway Company*, 2 Railway Cases, 872.

(*q*) 3 My. & K. 169.

(*r*) See also *The Attorney-General* v. *The Manchester and Leeds Railway Company*, 1 Railway Cases, 444.

(*s*) See also *Dawson* v. *Paver*, 4 Railway Cases, 81; *Farrow* v. *Vansittart*, 1 Railway Cases, 602.

(*t*) *Northam Bridge and Road Company* v. *The London and Southampton Railway Company*, 1 Railway Cases, 653; *Spencer* v. *The London and Birmingham Railway Company*, 1 Id. 159; *Jones* v. *The Great Western Railway Company*, 1 Id. 684; *The London and Birmingham Railway Company* v. *The Grand Junction Canal Company*, 1 Railway Cases, 224; ante, 363.

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without imposing unnecessary hardship upon the other (*u*). Thus, where the right to an injunction depended on a disputed legal question arising on an agreement, whereby a railway company had undertaken to stop every train at a refreshment station, the Court will not grant an injunction, while such question continues to be in dispute, if the company undertake to pay such a sum of money as may be as-

(*u*) By an agreement between the plaintiffs and the agent of a railway company, the former agreed to sell to the company a certain portion of a field, for the price of 229*l.* in the whole, being 120*l.* for the land, and 109*l.* for compensation for damage by severance to the remaining portion. The agreement contained a stipulation that, in case additional land should be wanted by the company, the same should be taken and paid for after the same rate per acre. The company subsequently took possession of a second portion of the field for purposes authorised by their act, and entered without having previously paid the purchase-money for that second portion after the rate specified in the agreement, and without having previously agreed upon, or ascertained by reference to a jury, the damage occasioned by the severance of the second portion from the remaining portion of the field. A bill having been filed for an injunction, it was decided by Lord *Lyndhurst*, C., that the agreement only provided for the amount to be paid to the plaintiffs for the value of the second portion of the field, and that neither by intention nor legal construction did such value include the amount of damage by severance to the remaining portion of the field, which amount was either to be agreed upon by the parties, or ascertained by a jury; and that, until such amount was agreed upon or ascertained, the company were not entitled to enter upon the second portion. But upon the company undertaking to pay the amount of damage caused by the severance, and to take proper proceedings, if necessary, for ascertaining the amount of such damage, the injunction was withheld: *Jones* v. *The Great Western Railway Company*, 1 Railway Cases, 684. In another case, where, before the amount to be paid by a railway company for land required by them for the purposes of their railway had been determined, a verbal consent, by one party stated to be qualified, by the other alleged to be general, was given, whereupon the railway company entered upon the land, and commenced works which would permanently affect it: it was decided by *Wigram*, V. C., that the Court would not interfere by injunction to stop the works, if perfect justice could be done by compelling the company to pay for the land; but would order the proximate value to be deposited until the amount should be determined: *Langford* v. *The Brighton, Lewes, & Hastings Railway Company*, 4 Railway Cases, 69. See also *The Attorney General* v. *The Eastern Counties Railway Company*, 3 Railway Cases, 337.

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sessed for damages for the violation of the covenant, to be ascertained by the Court, so as to avoid the possibility of inflicting a wrongful and irreparable loss upon the company by means of an injunction, and yet avoid the difficulty of bringing numerous actions at law (*x*).

So, where an injunction is applied for to prevent the use of things which are devoted to the public use, the Court will consider the amount of inconvenience which is likely to result if the injunction is granted, and they will sometimes allow a partial and restricted use of the thing complained of whilst further proceedings are pending (*y*). In all cases of this description, particularly where the equity depends upon a legal right, the Court regards both sides of the question, and looks to see, according as the decision shall be for one side or the other, which way the least loss would fall upon either party (*z*). In accordance with this rule, where it appeared that a company had cut through a road to form a bridge across it, without having first provided another sufficient temporary road, which the special act required them to do, and an injunction was granted after the mischief was done, restraining the company from destroying the road, Lord *Cottenham*, C., being satisfied that the road would be restored as speedily, by allowing the company to proceed with the works, as by requiring the company to restore the road, suspended the injunction for three weeks (*a*).

And the Court will not direct proceedings at law where the rights of the parties are clearly defined. Thus, in a

(*x*) *Rigby* v. *The Great Western Railway Company*, 1 Cooper's Cases, temp. Cottenham, C., 6; S. C., 10 Jurist, 561.

(*y*) *Gordon* v. *The Cheltenham and Great Western Union Railway Company*, 2 Railway Cases, 812; ante, 362.

(*z*) See *The Attorney-General* v. *The Mayor of Liverpool*, 1 M. & C. 208; *Hilton* v. *Lord Granville*, Cr. & Ph. 297; *Cory* v. *The Yarmouth and Norwich Railway Company*, 3 Hare, 593.

(*a*) *Spencer* v. *The London and Birmingham Railway Company*, 1 Railway Cases, 159.

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case where a railway company applied for an injunction to restrain a canal company from destroying works which had been erected to make a temporary bridge over the canal; Sir *C. C. Pepys*, then Master of the Rolls, being of opinion, that the railway act authorised the making of the bridge, said, that the point in dispute was a mere question of construction; and that, as no one fact was in issue, it would be an idle proceeding, and one attended with great inconvenience, if the company were ordered to suspend their works until the verdict of a jury should be obtained in their favour (*b*).

But, there are cases where the legal right must be established before an injunction can be obtained. Thus, where a party who complained of a nuisance caused by the use of certain coke ovens, applied for an injunction, Lord *Cottenham*, C., refused the application, and said, "I am asked by the plaintiff to conclude upon these conflicting affidavits, that this is such a nuisance that he is entitled to have it abated, and that the company are not to be at liberty to go on with their works. The jurisdiction of this Court is not an original jurisdiction; it exists, not for the purpose of trying a question of nuisance, but for the purpose of giving effect to a legal right after that legal right has been established. A party who comes here is bound to give some satisfactory reasons why he comes into a court of equity in the first instance, and why he does not, in the first instance, go to the ordinary tribunal. I see no reason whatever why, at the present moment, if this be a nuisance, and the plaintiff be entitled to a verdict, he does not come with a verdict establishing that fact (*c*)."

And the same learned Judge observes, in another case,

(*b*) *The London and Birmingham Railway Company* v. *The Grand Junction Canal Company*, 1 Railway Cases, 239.

(*c*) *Semple* v. *The London and Birmingham Railway Company*, 1 Railway Cases, 120.

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'It is very necessary that this Court should deal very strictly with companies, and prevent them, with the large powers that are given to them by acts of Parliament, from defeating the rights and interests of individuals. But it is also the duty of the Court to take care, that, if individuals avail themselves of any omission of any power on the part of the company, this Court should not assist those individuals in extorting money from the company. It is the duty of the Court in every case to steer clear of those two opposite extremes; and if there should be some omission, which may give a party a legal right against a company, the Court would leave that individual to his legal means of taking advantage of it (*d*)."

And, in a later case, where an application was made for an injunction to restrain the defendants from using a communication carried by certain branch rails from the plaintiffs' to the defendants' railway, *Wigram*, V. C., said, "The question I have to consider is, whether I should grant the injunction prayed, before a trial at law. Now, upon that question, adverting to the great reluctance which this Court has always shewn to grant injunctions against trespasses in the nature of nuisances affecting private rights until the legal right had been established by trial at law, (amounting, it has in some cases been said, to a positive rule not to grant the injunction before trial), I am clear, that the course of the Court, in cases like the present, entitles the defendants to call upon me, without forming a decided opinion upon the law of the case, not to decide against them in the present stage of the inquiry. In coming to this conclusion, I am, of course, governed in some degree by the nature of the injury complained of, as not being irreparable, in the sense of waste or destruction; and I must, therefore, be distinctly understood as not repudiating my right to grant an injunc-

(*d*) *Bell* v. *The Hull and Selby Railway Company*, 1 Railway Cases, 636.

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tion at any moment, if the defendants, from carelessness, wilfulness, or otherwise, should so exercise the privilege they claim, as seriously to obstruct the plaintiffs in the use of their own railway (*e*)."

And, Lord *Cottenham*, C., refused to grant an injunction to prevent the owners of a railroad, made over the plaintiff's land, from using the railroad after it had been completed, or from interrupting the plaintiff's workmen in removing it, and restoring the land to its original state, although the possession of the land for the purpose of constructing the railroad had been obtained from a tenant of the plaintiff by means of circumvention and fraud. His Lordship intimated, that, if the defendants were not entitled to the right of way which they claimed, they were mere trespassers, and the plaintiffs had their proper legal remedy against them as such (*f*).

There is also another class of cases to which the remedy by injunction is applicable. It seems, that, if it can be clearly made out, that a railway company cannot perform the undertaking imposed upon them by the terms of the special act, an injunction may be obtained by an owner of property through which the Legislature has given the company a right to pass, to restrain the company from taking his lands (*g*). For, to take any more land, where the whole work can never be performed, is clearly injurious to him, and

(*e*) *The North Union Railway Company* v. *The Bolton and Preston Railway Company*, 3 Railway Cases, 345.

(*f*) *Deere* v. *Guest*, 1 My. & Cr. 516. See also *Warburton* v. *The London and Blackwall Railway Co.*, 1 Railway Cases, 558.

(*g*) *Agar* v. *The Regent's Canal Company*, 1 Swanst. 244, n.; *Gray* v. *The Liverpool and Bury Railway Company*, 10 Jurist, 364, post, 568. We have seen (ante, 526) that the Court of Queen's Bench will interfere by mandamus to compel a railway company to complete a line of railway according to the stipulations contained in the special act; and that it is no sufficient answer, for the company to allege, that all the funds over which they have any control are exhausted.

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a substantial breach of the condition on which the Legislature granted the right to do it. So, it has been said, that if the termini be changed, and, instead of proceeding to some great town or city, the railway were to terminate in some obscure village, the same result would follow (*h*). But to induce a Court of equity thus to interfere, it must clearly appear that the parliamentary plan is finally abandoned (*i*), and that a real and substantial injury would be sustained by the complaining party (*k*).

But where commissioners were empowered by an act of Parliament to widen and improve streets, it was decided, that a person whose property was required by the commissioners for the purposes of the act, was not entitled to restrain them, by injunction, from taking the steps prescribed for obtaining possession of the property, until they should have shewn a sufficient fund in hand to satisfy the price which might be awarded, or until they should have shewn the means by which they proposed to procure it. This case was decided on the ground, that every purchase was a distinct work in itself, and to that extent accomplished the object of the Legislature (*l*).

As to the ratification of contracts made before the special act is obtained.

It has been already mentioned, that the remedy by injunction is applicable to cases where lands are taken, or works executed, in violation of an agreement previously made between the parties. Upon this subject it has been determined, that railway companies, when incorporated, are bound, in equity, to ratify and carry into effect all agreements made with landowners or others, by the provisional committee or their agents, during the progress of the bill through Parliament, especially if the company has received

(*h*) *Lee* v. *Milner*, 2 Y. & Col. 611.

(*i*) *Lee* v. *Milner*, 2 Y. & Col. 618; *Mayor of King's Lynn* v. *Pemberton*, 1 Swanst. 244.

(*k*) Ante, 341.

(*l*) *Salmon* v. *Randall*, 3 My. & Cr. 439.

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the full benefit of the consideration which the agreement stipulated for (*m*).

(*m*) Agreements made by landowners with railway companies, to withdraw or withhold opposition to a bill in Parliament, are not illegal: and large sums of money agreed to be paid for land, in consideration of the withdrawal of opposition to such bills have been recovered See *Lord Petre* v. *The Eastern Counties Railway Company*, 1 Railway Cases, 462: *Lord Howden* v. *Simpson*, 10 A. & E. 820, confirmed on error, 3 Railway Cases, 294: *Doo* v. *The London and Croydon Railway Company*, 1 Railway Cases, 257. It has been contended, that, although this species of contract may be good in the case of private individuals, it is not lawful for a member of Parliament to make such a bargain, because it amounts to a contract to sell his vote—in other words, that it would be a breach of contract if he afterwards voted against the bill. But the Court of Queen's Bench, in a late case, observed on this point: "Although the plaintiff was a peer, that would not affect his right to make any bargain for the sale of his land, or for a compensation for an injury to it; if it did, a peer or a member of Parliament would be placed in a worse condition than any private individual. We must presume, as there is no averment to the contrary, that his quality of peer in no way affected the bargain in question, and that he was left, notwithstanding that agreement, to exercise his free judgment, and give or withhold his vote, according to his conscience, upon the measure, when it came before him in his legislative capacity. In the absence of any agreement or understanding that the vote should be given in a particular way, the mere tendency or possible effect of such a contract on the vote of a member of either House cannot be taken into consideration." *Lord Howden* v. *Simpson*, 10 A. & E. 821.

An attempt was recently made to set aside a contract entered into by a railway company with a landowner, upon the ground, that, at the time of making the agreement, the parties intended to prosecute a subsequent bill in Parliament, whereby the railway might pass through other lands than those mentioned in the bill, and that this arrangement was fraudulently withheld from the knowledge of Parliament, and also from the owners of the other lands. The Court of Queen's Bench decided that the contract was invalid. See *Lord Howden* v. *Simpson*, 10 A. & E. 793; *Simpson* v. *Lord Howden*, 1 Keen, 583; 1 Railway Cases, 326; but when the question was afterwards argued in error, it went off on a technical point: *Lord Howden* v. *Simpson*, 10 A. & E. 815; *S. C.*, 1 Railway Cases, 347. See, also, *The Vauxhall Bridge Company* v. *Earl Spencer*, 2 Madd. 356; and, on appeal, Jacob, 64.

Parties who desire to make arrangements with the promoters of bills, as to the mode in which the works are to be executed, or their property dealt with, should have a proper agreement drawn up and signed; or oppose the bill in Parliament, with a view to have a clause inserted in the special act. If the agreement be made with a company provisionally registered, it should

As to the Ratification of Contracts made before the Special Act is obtained.

Upon this point it has been said by a learned judge, that where parties are going before Parliament for the purpose of being incorporated, a door would be open to great frauds, if bargains made by persons acting as their agents when they are in a scattered and individual state, were not binding on the company when incorporated (*n*); and, on appeal, Lord *Cottenham*, C., approved of this doctrine. His Lordship observed, "The railway company contend, that they, being now a corporation, are not bound by anything which may have passed, or by any contract which may have been entered into by the projectors of the company, before the act of incorporation. If this proposition could be supported, it would be of extensive consequence at this time, when so much property becomes every year subject to the power of these incorporated companies. The objection rests upon

be made conditional on the completion of the company, and to take effect after the act of Parliament shall have been obtained, this being the limited power conferred on such companies so far as respects their right to purchase lands: see 7 & 8 Vict. c. 110, s. 23, post, App. 48. If the company be completely registered, the agreement should be in the same terms, and it would be prudent to have the corporate seal affixed; but, in some cases, this precaution would be unnecessary: see *The Fishmongers' Company* v. *Robertson*, 5 Man. & Gr. 131. Where a qualified assent was sent to Parliament, and the bill afterwards passed without any provision being inserted to meet the wishes of the parties who gave such assent, equity will not relieve them, although the promoters of the bill may have given an implied consent to the terms proposed: see *Aldred* v. *The North Midland Railway Company*, 1 Railway Cases, 404; ante, 383. Neither will equity assist a person who withholds his opposition to a bill upon bare representations made to him as to the intention of the proposed company, with respect to interference with his lands, because he ought to use common vigilance, and oppose the bill: *Hargreaves* v. *The Lancaster and Preston Junction Railway Company*, 1 Railway Cases, 416; *The Provost and Eaton College* v. *The Great Western Railway Company*, 1 Railway Cases, 200. Indeed, the courts of equity before they interfere by granting an injunction, will always watch with the greatest strictness, and require extreme accuracy in the statement which is the foundation of such a serious interposition against a legal right.

(*n*) *Edwards* v. *The Grand Junction Railway Company*, 1 Railway Cases, 173; 1 My. & Cr. 650; 7 Sim. 336; ante, 383; *Parsons* v. *Spooner*, 10 Jurist, 425, post, 636.

As to the Ratification of Contracts made before the Special Act is obtained.

grounds purely technical, and those applicable only to actions at law. It is said, that the company cannot be sued upon the contract, and that the agent entered into a personal contract, undertaking to procure from the company, when incorporated, a similar contract. It cannot be denied that the act of the agent was the act of the projectors of the railway; it was therefore the agreement of the parties seeking an act of incorporation, that, when incorporated, certain acts should be done. The question is not, whether there be any legal binding contract at law, but whether this Court will permit the company to use the powers under the act in direct opposition to the arrangements with the trustees before the act, and upon the faith of which they were permitted to obtain such powers. If the company and projectors cannot be identified, still it is clear that the company have acceded to, and are now in possession of, all that the projectors had before. They are entitled to all their rights, and subject to their liabilities. If any one individual had projected such a scheme, and in prosecution of it had entered into an arrangement, and then had assigned all his interest in it to another, there could be no legal obligation between those who had dealt with the original projectors and such purchaser; but in this Court it would be otherwise. So here, as the company stand in the place of the projectors, they cannot repudiate the arrangement into which such projectors have entered in their corporate capacity: they cannot exercise the powers given by Parliament to such projectors, and refuse to comply with those terms, upon the faith of which all opposition to their obtaining such powers was withheld."

And where an agreement had been entered into by the promoters of a railway to purchase certain lands, and the owner, in consideration thereof, withdrew his opposition to the bill then pending in Parliament, and the promoters who

made the agreement afterwards, under the sanction of Parliament, referred the merits of their own and another competing line to arbitration, and the two companies agreed that the successful party should adopt the engagements of the rejected company, and the owner assented to this arrangement, it was decided that the second company, in whose favour the arbitrator decided, and who subsequently obtained an act of Parliament to make the railway, were bound to perform the contract made with the landowner (*o*). But if a party intends to require a substituted company to perform a contract made by him with other persons, he must lose no time in asserting his rights against them. If he so conducts himself as to lead them to suppose that he has waived the contract, equity will afford no relief (*p*).

As to the Ratification of Contracts made before the Special Act is obtained.

Many other instances may be mentioned in which injunctions have been issued to restrain the proceedings of railway companies,—as to restrain a company from declaring shares to be forfeited (*q*); to restrain an action at law brought to recover calls upon shares (*r*); to restrain a company whose terminus was within the limits of a ferry, from conveying railway passengers across the river in steamboats, in contravention of the rights of the owners of the ferry (*s*); to restrain a railway company from charging the plaintiff higher

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(*o*) *Stanley* v. *The Chester and Birkenhead Railway Company*, 1 Railway Cases, 58; 9 Sim. 264; 3 Myl. & Cr. 773.

(*p*) *Greenhalgh* v. *The Manchester and Birmingham Railway Company*, 1 Railway Cases, 68; 3 Myl. & Cr. 784; 9 Sim. 416. And see post, 564.

(*q*) *Preston* v. *The Grand Collier Dock Company*, 2 Railway Cases, 335, S. C., 11 Simons, 327; ante, 136, n. (*s*).

(*r*) *Playfair* v. *The Birmingham, Bristol, and Thames Junction Railway Company*, 1 Railway Cases, 640. In this case the Court acted upon the rule that a party applying for the aid of a court of equity against a legal action, to which he states he has no defence at law, must, in order to obtain it, give judgment in the action. See also *Barnard* v. *Wallis*, 2 Railway Cases, 186.

(*s*) *Cory* v. *The Yarmouth and Norwich Railway Company*, 3 Hare, 593; 3 Railway Cases, 524.

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rates for the carriage of goods than they charged to other persons for the carriage of like goods under similar circumstances (*t*); to restrain a canal company from affixing the corporate seal to a petition to Parliament for an act to

(*t*) *The Attorney-General* v. *The Birmingham and Derby Junction Railway Co.*, 2 Railway Cases, 124; ante, 439. In *Pickford* v. *The Grand Junction Railway Co.*, 3 Railway Cases, 538, an application for an injunction was made after the decision of the Court of Exchequer: (Vide 10 M. & W. 399; 3 Railway Cases, 193; ante, 433). The following extract from the judgment of Lord *Lyndhurst*, C., will shew the progress of the protracted litigation which has taken place on the subject alluded to in the judgment:—

"The objections insisted on by the plaintiffs are four in number. I will consider, first, that which relates to Messrs. Chaplin & Horne. It is sworn, on the part of the defendants, that, immediately after the judgment delivered in the Court of Exchequer, the agreement with Messrs. Chaplin & Horne was put an end to, and a new arrangement made, which, they submit, is free from objection.

"The carriage of goods to the terminus at Camden Town, as they represent, is performed by the company solely on their own account. Chaplin & Horne have no interest in it. The charge to the plaintiffs is the same as to the rest of the public; they allow 7*s*. a ton to Chaplin & Horne for delivering and collecting, which, they contend, is a fair price; and for the other duties which they perform as their agents, they are paid by a salary.

"They further state, that they make the same allowance of 7*s*. a ton to all the persons who receive their goods at the terminus, or bring them there, and that they are willing, and have offered, to make the same allowance to plaintiffs. If this is a bonâ fide arrangement, it seems free from any legal objection. It is suggested, indeed, that it is colourable: that the charge is merely nominal, and contrived for the purpose of avoiding the decision of the Court of Exchequer.

"There is not, I think, sufficient in these affidavits to make out such a case, although, perhaps, there may be some ground for suspicion.

"Another objection arises out of that part of the case which relates to the carriage of small parcels. The defendants charged 4*s*. per cwt., giving an option to the employer to pay, if he think proper, according to the charge for the parcels separately. The plaintiffs contend that this is illegal, and that it has been so decided by the Court of Exchequer; and they claim, therefore, the interposition and assistance of this Court to prevent the continuance of the abuse. The Court of Exchequer did not decide what was the reasonable sum to be paid in cases of this sort. They stated they were relieved from the necessity of doing so by the admissions in the special case. Whether 4*s*. a cwt. is a reasonable charge, has never been expressly determined. In estimating the reasonableness of the charge, several points were required to be

convert a portion of a canal into a railway, and from applying any of the corporate funds to the proposed ob-

considered: the inspection of each of the packages would be absolutely impossible. It seems to follow, therefore, that, for the purpose of guarding against fraud, some average amount must be established. The highest rate of charge for articles contained in the published list is 3*s*. per cwt.; but, for several articles, not enumerated in that paper, a further sum, the defendants say, is required. If it be lawful, then, to charge, in cases of this sort, according to an average, (and I do not at present see any reason against it), the question as to what would be the reasonable amount of that average is still to be decided. But an option is given to the party to pay the 4*s*. per cwt., or to pay for the parcels separately. To require them to pay for the separate parcels would, according to the decision of the Court of Exchequer, be illegal; but that is not required—an option is given; and although the scale may in some cases be less than 4*s*. a cwt., yet in others it would be considerably more. If the principle, therefore, of an average be legal, and 4*s*. be a reasonable amount of that average, the alternative offered to the owners of the goods would not render the charge illegal.

"It is not improbable, adverting to what fell from the learned Baron in giving the judgment of the Court, that, if the point had been before him for decision, he might have considered 4*s*. as an unreasonable charge; but the question still remains for the decision of a jury, acting indeed, under the guidance of a judge; and, independently, therefore, of the ground taken by the Vice-Chancellor, I think I ought not, in this state of the case, to grant the injunction on this ground.

"Another ground of complaint is, that more in proportion is charged when goods are carried over part of the line, than when goods are carried the whole distance to the terminus. This is founded on certain calculations as to the charges made by the London and Birmingham Railway Company, which are stated, on the other side, to be incorrect. In the affidavit of Mr. Huish, the mode of charge is described; and it is sworn, that, having regard to that mode of charge, the sum charged in respect of the short distance does not exceed the fair proportion.

"The remaining question relates to the carriage of goods from Liverpool to Worcester. The complaint is, that the same charge is made for goods delivered at the Birmingham terminus as for goods carried on and delivered at Worcester. The case of the defendants, as they state it, appears to be this: they are carriers only to Birmingham; they deliver the goods there; they make the same charge in this respect to all their customers; but they admit that, in consideration of Southern & Co. agreeing to give them their whole custom, and agreeing to pay, on certain articles, an increased price, they make a quarterly deduction from their accounts. They offer the same terms to the plaintiffs, and they say this species of arrangement is usual with railway companies. Whether such a principle can be maintained may be

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ject (*u*). In all cases of this nature, the courts of equity are guided by the principles which have been already referred to, and they will grant or refuse the injunction according to the merits of each particular case.

And it is to be observed that a party who seeks relief by injunction, must apply to the Court promptly. If he allows the works complained of to proceed, whereby large sums of money are expended, a subsequent application for an injunction will be refused, on the ground of acquiescence (*v*). In accordance with the rule above mentioned, where a party allowed a railway company to make an excavation to form a new channel for a river, which occupied a considerable period of time, and involved a large expenditure of money, the Court refused an injunction, although it was applied for as soon as the company ceased to work on their own lands, and began to cut the banks of the river (*x*). Where, however, the proprietors of a turnpike-road stood by while a railway company laid down tempo-

open to much question; but, as neither in this nor in the preceding case has a court of law declared the proceedings of the defendants to be illegal, I think it would be impossible to grant the injunction; for, as was justly observed by Lord *Cottenham* in the case of *Semple* v. *The London and Birmingham Railway Co.*, (1 Railway Cases, 120), the Court exercises this jurisdiction for the purpose of giving effect to a legal right, after that legal right has been established. I am of opinion, therefore, that the appeal motion must be refused, and with costs."

(*u*) *Cunliff* v. *The Manchester and Bolton Canal Company*, 2 R. & My. 480, n. But see *Ware* v. *The Grand Junction Waterworks Company*, 2 & My. 470.

(*v*) *Illingworth* v. *The Manchester and Leeds Railway Company*, 2 Railway Cases, 187; *Semple* v. *The London and Birmingham Railway Company*, 1 Railway Cases, 120; *Greenhalgh* v. *The Manchester and Birmingham Railway Company*, 1 Railway Cases, 68; 3 My. & Cr. 784; *The Birmingham Canal Company* v. *Lloyd*, 18 Ves. 515; *Attorney-General* v. *The Manchester and Leeds Railway Company*, 1 Railway Cases, 436. But if a party believes a mere temporary violation of his right to be threatened, he is not precluded from relief. See *Gordon* v. *The Cheltenham and Great Western Union Railway Company*, 2 Railway Cases, 800; ante, 362.

(*x*) *Illingworth* v. *The Manchester and Leeds Railway Company*, 2 Railway Cases, 187.

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rary rails across their road, and employed wagons drawn by horses only on the temporary railroad, for the purpose of carrying on the works, that is not such laches as will deprive the turnpike trustees of any right they have to an injunction to restrain the railroad company from using the railroad for public traffic with locomotive engines (*y*). With regard to what constitutes that amount of laches which will deprive a party of his right to relief by injunction, it is difficult to state any positive rule. To a very considerable extent each case will be governed by its own particular circumstances (*z*); and it has been said on this subject, that there are two arguments invariably adduced by public companies (*a*): if the plaintiff comes to the Court complaining of an injury at the first commencement, it is said that the damage is trifling, and the motion frivolous and vexatious; if he waits until it has assumed a grave shape, it is then said that he has acquiesced, and is therefore precluded from complaining.

When an injunction is applied for, all the facts of the case should be fairly stated; if they are not, and the injunction is afterwards dissolved in consequence of the false representation of the case, the rule is, that the plaintiff will be subjected to pay the whole of the defendant's costs (*b*). And if a party comes for an *ex parte* injunction, and misrepresents the facts of the case, he is not permitted to support the injunction by shewing another state of circumstances in which he would be entitled to it (*c*). Upon this point, it

(*y*) *Northern Bridge and Road Company* v. *The London and Southampton Railway Company*, 1 Railway Cases, 653; 9 Law Journal, N. S., 277; ante, 380.

(*z*) Drewry on Injunctions, 293.

(*a*) *Innocent* v. *The North Midland Canal Company*, 1 Railway Cases, 250, arguendo.

(*b*) *Illingworth* v. *The Manchester and Leeds Railway Company*, 2 Railway Cases, 187; *Semple* v. *The London and Birmingham Railway Company*, 1 Railway Cases, 493.

(*c*) *Greenhalgh* v. *The Manchester and Birmingham Railway Company*, 1 Railway Cases, 118.

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has been said that the jurisdiction of the Court in granting *ex parte* injunctions is a very hazardous one, and one which, though often used to preserve property, may be often used to the injury of others; and it is right that a strict hand should be held over those who come with such applications (*d*).

And it has been lately decided, that it is no objection to an injunction that it is mandatory in its effects, although only prohibitory in form. Thus in *The Great North of England, Clarence, and Hartlepool Junction Railway Company* v. *The Clarence Railway Company* (*e*), the principal question between the parties was upon the construction of the act of Parliament under which the plaintiffs claimed to act; whether, assuming that the plaintiffs had a right to make a bridge, pursuant to a certain plan, over the defendants' railway, no part of the permanent supports of such bridge being intended to rest upon the defendants' land, the plaintiffs had a right, by way of temporary easement, to erect poles and other temporary constructions upon land adjacent to the defendants' railway, and to pass and re-pass across such railway, doing no vexatious acts, compensating for all damage, and not interfering with the regular traffic of the defendants' railway. The defendants, in order to prevent the plaintiffs from so temporarily using their land, had built up a wall, which effectually prevented the plaintiffs from carrying on their works; and the bill prayed an injunction to restrain the defendants from continuing to maintain such wall, and from preventing the defendants from making their bridge, &c. The Court refused to grant the injunction until satisfied by the opinion of a court of law that the plaintiffs had a legal right to build the bridge, and also a legal right to use the defendants' land by way of

(*d*) *The Attorney-General* v. *The Mayor of Liverpool*, 1 My. & Cr. 210.

(*e*) 1 Coll. 507; see also, 10 Jurist, 278.

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temporary easement. But the Court of Exchequer, having certified that the plaintiffs had both such legal rights, the Lord Chancellor, (supporting the view of *Knight Bruce*, V. C., that it was no objection to the injunction that it was in effect of a mandatory character), made the order nearly in the terms of the prayer of the bill. To the same effect is *Lord Mexborough* v. *Bower* (*f*), in which an injunction was granted to restrain the defendant (who had cut certain channels from one coal field into another, in derogation of an agreement with the plaintiff) from permitting the communication to continue open.

Lastly, it is to be observed, that the jurisdiction of equity to restrain a railway company from so dealing in the course of its operations as to injure the property of another, is not taken away because it happens that the act incorporating the company points out, specifically; a mode in which a party complaining of its acts may obtain compensation (*g*).

It now only remains to notice some instances in which injunctions have been applied for with a view to restrain parties connected with the management of railway companies, from proceeding with the business entrusted to them; and it will be seen that such applications are frequently met by demurrers, on the ground of a want of equity, or a want of parties. The peculiar importance of these cases at this time seems to justify a statement of them in detail; and this appears also to be a convenient place for inserting several recent decisions, as reported in a valuable periodical, which shew generally the jurisdiction exercised by the Courts of Equity over railway companies.

(*f*) 7 Beav. 127.

(*g*) *Coates* v. *The Clarence Railway Company*, 1 R. & My. 181; Drewry on Injunctions, 295.

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Principles on which the Court interferes against railway companies by injunction, discussed.

Semble, it is the duty of a railway company, as to all those things which depend upon agreements with individuals, to settle those agreements before they begin to construct any part of the railway.

Gray v. *The Liverpool and Bury Railway Company*, (10 *Jurist*, 364, *March* 16*th and* 29*th*, 1846).]—The plaintiffs were the owners of cotton-mills and lands thereto adjoining, situate at Darcey Lever, in the county of Lancaster; and the above company, in their original plans, proposed to carry their line through the buildings and lands immediately connected with the mills, so as to intersect them. This, however, was not sanctioned by the Legislature; and after opposition by the plaintiffs, and some attempts between the company and the plaintiffs to compromise the matter, the following clauses were inserted into the act of incorporation, for the protection of the plaintiffs:—By the 92nd clause, after reciting that the plaintiffs were the owners and occupiers of certain mills, lands, and buildings situate at Darcey Lever, through which the line of railway, as delineated in the plans and sections referred to in the act, passed, it was enacted that it should not be lawful for the company, without the consent of the plaintiffs, to construct the railway nearer to the said mills, lands, and buildings, or any of them, than the south-east end of Lever Bridge, delineated on the plans, and therein numbered 1. And the 93rd clause provided, that the company should not, in or during the construction or progress of the railway or works, divert, obstruct, or in any way injure the goits belonging to the plaintiffs, connected with their works at Darcey Lever, nor disturb the carrying on of the plaintiffs' works, under certain penalties therein mentioned. Some communication, shortly after the act passed, took place between the plaintiffs and the company respecting the construction of the railway over the lands in question, but no agreement was entered into; and the company, without first obtaining the consent of the plaintiffs, entered upon the land of the plaintiffs adjoining the land on which the mills were situate, but separated therefrom by a public road; and they marked out a line running from west to east from the south-east end of Lever Bridge, which crossed the river Tonge, parallel to the line originally delineated on their plans, but removed therefrom about the same space, for the most part, as the south-east end of Lever Bridge was distant from that point of their original line which was nearest to the south-east end of the bridge. The mills were situated in a south-easterly direction from the bridge. The plaintiffs filed their bill for an injunction, which they now applied for. They contended, that the company could not take without their consent any part of the lands belonging to them at Darcey Lever, although not immediately connected with the mills, or essential to carrying on their works; and

that the company could not advance further than the south-east end of Lever Bridge, as by doing so they must enter upon lands belonging to the plaintiffs. The company, on the other hand, insisted that the object of the Legislature was only to prevent the company from interfering with the mills and lands immediately adjoining thereto, and not to prevent them from constructing their railway over other lands of the plaintiffs not essential to the working of the mills; that the effect of plaintiffs' construction would be, to prevent the railway from being made without the plaintiffs' consent, because beyond Lever Bridge the whole of the land between the deviation lines belonged to the plaintiffs. This would clearly be contrary to the primary object of the Legislature, which was, that a railway should at all events be made.

Lord *Langdale*, M. R.—I think it is exceedingly to be regretted that the parties here have not been able to come to some sort of arrangement or compromise, so as to prevent this litigation, and prevent the necessity of any order. However, as they have been so unfortunate as not to be able to do so, it is for me to give the best opinion that I can. In these cases it is always to be borne in mind that these acts of Parliament are acts of sovereign and imperial power, operating in the most harsh shape in which that power can be applied in civil matters. Solicited as they are by individuals, for the purpose of private speculation and individual benefit, they are not passed by the Legislature otherwise than on the notion that they contribute to the public good so materially as to make it even for the general benefit to violate the private property of individuals. For the sake of that which is supposed to be the public good, (and, upon the construction of a particular act which has passed, we are bound to consider it for the public good on the whole), it is thought fit to take away from private individuals that which is undoubtedly their own absolute property, and that, too, at a price which is to be fixed by authority, (if need be), without any voice of their own. Whoever considers the effect of what is thus done, must see the consequences which frequently do happen to individuals: that to which they have, perhaps, attached their fortunes and all their interest in life may be taken from them by an absolute exercise of imperial power, and the whole of their circumstances and situation in life may be entirely altered for a sum of money to be fixed by somebody else. This Court has, I believe, always looked on these things in the light I have now mentioned. Again and again, though not so frequently as of late years,

these matters have been under consideration. At one time the doctrine held in this Court was, that, unless those who had obtained the powers could satisfactorily shew that they had the means of completing that undertaking, the whole, and not a part, of which was alleged to be for the public good, they should not be allowed to invade any man's property in the execution of only a part. The hardship imposed on individuals, I think, and I am glad to think there is reason to believe, has of late years been subject to a great deal more anxious consideration than it used to be. Probably the frequency of these applications and the vast extent of the works have occasioned that particular consideration. I think one may say it has almost become a rule, that, where the property of the party does not possess any peculiar value, Parliament will apply that which has become almost a general rule in such cases; but, if the property does possess some peculiar value, if the railway is to pass over a portion of property more valued than any other, and to which the owner may be considered to be more peculiarly attached, in such cases Parliament will facilitate and encourage agreements between the parties who possess such property and those who desire to take it away; and, in cases in which those agreements cannot be at once formed, will refer the parties to an agreement to be subsequently entered into between themselves. And so it appears to have been in this particular case. In the course of the last year the promoters of a railway from Liverpool to Wigan, Bolton, and Bury were soliciting an act of Parliament to construct a railway which passed through property belonging to and occupied by the plaintiffs in this cause. The plaintiffs, conceiving that this property was of peculiar value, which was not to be determined upon according to the general rules which are adopted in cases where there is no specific and peculiar value, opposed the bill. It appears from the evidence offered now, that the opposition was successful; that, unless some arrangement could be formed, some agreement entered into between them, the bill would not have passed subjecting them to the ordinary rules which are established in such cases. In that state of things an attempt was made for a compromise and agreement. Most unhappily, I think, for the interest of all persons who are concerned in this matter, that was not successful; but it is plain, and whether it is said in the evidence or not, I certainly do presume, that they were both of them in such a state of mind after the communications they had had with each other, that they believed they could come to an agreement. I do not say there was anything

specifically pointed out,—probably not; but they believed they could come to an agreement. If they had not had this belief, Messrs. Gray, the plaintiffs, would not have insisted on this clause, neither would the company have agreed to place themselves in their power, for it would have been useless, unless they could come to an agreement; but, after having failed to come to an agreement, by consent, this clause was agreed to. Now, the clause is this: "Whereas, John Gray and W. Gray are the owners and occupiers of certain mills, lands, and buildings, situate at Darcey Lever, through which the line of the railway, as delineated on the plans and sections before referred to, passes; be it enacted, that it shall not be lawful for the said Company, without the consent of the said John Gray and William Gray, or the owner or owners for the time being of the said mills, lands, and buildings, to construct the said railway nearer to the same mills, lands, and buildings, or any of them, than the south-east end of Lever Bridge, delineated on the plans, and therein numbered 1." They are not to construct the railway nearer to the same mills, lands, and premises, —not nearer to any part specified, but not nearer to the mills, lands, and buildings,—not nearer than the south-east end of Lever Bridge. Now, there is a collective description or name, "mills, lands, and buildings:" it includes the whole and every part of those premises of which John Gray and William Gray are the owners and occupiers. Now, they were the owners and occupiers of the whole which is delineated on the map, and the railway is not to be constructed nearer than the south-east end of the bridge, which bridge comes over the river Tonge, and is immediately continued by the road, which has on both sides a portion of those lands. The words in themselves do not seem to me to be attended with any difficulty: "You shall not come nearer to my estate." But by argument it is said that that cannot be the construction; and really the question is, whether there is anything to overcome that which is the plain and natural construction of these words. In the first place, it is said this construction would make the construction of the railway dependant altogether on the will of Messrs. Gray. That does not in itself seem very absurd, though it is said to be so. But it is said that cannot be the construction, because the whole scope of the act clearly manifests, that, at all events, there was to be a railway constructed. How is that? A railway is to be constructed, to be sure, but subject to the provisions in the act; and this is a provision in the act; and, therefore, it is not that the railway is to be constructed at all events, but it is that the

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railway is to be constructed subject to the provisions of the act, including, among others, this clause. Therefore, that does not go far. Well, then it is said that you must give for this purpose a restricted meaning to the words "mills, lands, and buildings." Why must you? There is no distinction made in the act; but it is said the mills, lands, and buildings must mean either those which are employed in the factory, which gives the particular special value to the property, or it must mean those strictly cut by the line of railway as designed before, or it must have some other restricted meaning, found out in some other way. I think there has been a great deal of very ingenious argument used on that subject, but I do not find anything to convey to the mind anything like a conviction that this was the intention of both parties. As to all the arguments about the Legislature intending this or that, I think nothing of them. The Legislature had no object but to provide that there should be an agreement between the parties. The Legislature meant, provided this agreement should be made, that the railway should be constructed. Another argument has been urged with a great deal of ingenuity, and it certainly is very plausible: it is, that, supposing there was to be a railway, the intention was to keep the railway a certain distance off the line originally designed, and that it might be constructed on a parallel line. There is a great deal of plausibility about it; but there are no words in this clause of the act which in the least degree approach to an indication of any such thing being meant. I make this observation on the whole, that, if any one of these constructions had been meant, I believe the full effect of each construction might have been as clearly expressed in as many words as are employed in this clause. There is no one of them that there would have been any difficulty in expressing. If any one of the propositions was the real meaning of these parties, why was it not stated? If it was not the real meaning of both sides, why are we to strain the construction of the words that are found in the act? Now, with respect to these acts of Parliament, I have had the opinion stated to me which was expressed by Lord Cottenham on this subject; and, coming from him, I must say I consider it comes with peculiar weight, because never has he at any period, in the numerous cases which were at one time before every branch of the court,—never has he shewn the least disposition to press any harsh construction against railway companies: on the contrary, he has been most anxious to uphold them, and sometimes, in cases of considerable difficulty, to uphold them in the legal exercise of those

powers with which Parliament had invested them. And he says, "If Parliament has authorised the thing to be done by agreement, it is nonsense for you to come and ask the Court to put a liberal construction upon it. I am dealing between two men whose rights are to be determined and affected by agreement entered into between themselves. I must not look at consequences,—I must not look to the consequence of giving operation and effect to that which I think agreed on between these parties. They have agreed, and the Legislature have allowed them to agree on the terms on which they will give up their land." So, here, it may be that they may be very exorbitant terms which are demanded: I know nothing of it one way or the other. It may be that very fair and just terms were refused: I know nothing of that; but, taking that clause to be the expression of an agreement, I think the agreement is, that you are not to enter upon these lands; that is, you are not to enter upon these lands, if you must do so by coming nearer than the end of the bridge. If that is the meaning of it, it is so to be intended. Well, then, how is this to be altered? I think it can hardly be altered without Parliament. I do not see how I am to make an agreement, or, by putting a liberal (that is to say, in this case, a forced) construction on this act of Parliament, compel these persons to give up their land, which they have not agreed to give up, for the price that has been offered to them. I am surprised at the course which the parties have taken. I regret it. I cannot help thinking they would have agreed, if there had been a communication made by the company immediately after the act of Parliament passed; if, instead of the general notice given in the month of August, there had been a communication proposing an agreement. That was not done, but the common notice was given. It excited alarm, which was appeased to some extent by the answer received to it, and then the whole matter was entirely disregarded. It is said, and, I believe, perfectly according to the facts, that it happens in this case that these gentlemen possess the whole tract of land between the utmost bounds of deviation; and it is a peculiarity here, that, by refusing to agree, or by the parties being unable to come to an agreement, it stops the railway altogether. If it is so, was not that known to the parties at the time? Had they not the maps—had they not everything ascertained at that moment? Did not they see at that time, that, if there was no agreement, there could be no railway? I am not at all clear that this may not lead to much more serious inconvenience than has yet been apprehended; and it was with a view to that, that I adverted to

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what had been the doctrine of the Court at one time; and I do not know whether it may not be applied again. If it is shewn that the plan marked out by Parliament cannot be executed, have the company a right to do anything at all with the railway? If it is clear that the object for which Parliament intended this railway to be applied, viz., a communication by railway from Liverpool to Bury,—if it is perfectly clear that the line is cut off, and that the whole of it cannot be effected,—has this railway company a right to persist, and invade the property of individuals, which they are only to do for the public benefit, to be secured by the whole? Now, this I state to shew how strongly I feel what was the duty of this railway company—that, as to all those things with respect to which they were dependant on individual agreement, it was their duty to have those agreements settled before they began to cut anywhere. It is a strange thing, indeed, that men's properties are to be taken from them in this way, with a view to the general benefit, the parties not having done those things which are incumbent on them to secure their capacity and stability to complete the whole (*a*). That, however, is not part of this application. I am of opinion, that, on the construction of this clause, the company have not a right to make a railway through these lands until they have entered into an agreement with the plaintiffs, and I shall, therefore, grant this injunction.

When a bill in equity will be dismissed for want of parties.

Greathed v. *The London and South-western Railway Company*, (10 *Jurist*, 343, *Feb. 27th and 28th*, 1846).]—This bill was filed by Edward Harris Greathed, a proprietor of ten shares in the Southampton and Dorchester Railway Company, "on behalf of himself and all other the shareholders of said Company, (except such as are defendants hereto, and such as have contracted to sell their shares to the London and South-western Railway Company), their directors and agents," against the London and South-western Railway Company and the Southampton and Dorchester Railway Company. The bill, after reciting the act incorporating the Southampton and Dorchester Railway Company, (8 & 9 Vict. c. xciii), whereby it appeared, that, for the purpose of laying down a single line of rails, the capital was to be 500,000*l.*; and that, in the event of the Board of Trade requiring a double line of rails to be laid down, the capital might be increasing to any extent, not exceeding 180,000*l.*; that the capital should be divided into shares of 50*l.*; that the number of directors was to be twelve, of whom four should be directors for the time being

(*a*) See further on this subject, ante, 556.

he London and South-western Railway Company; the gauge of railway to be of such mode and construction as would admit of same being worked continuously with the London and South-ern Railway; and after reciting the various clauses in that act, in the several acts incorporating the South-western Railway pany and the Great Western Railway Company, whereby the tors of said several companies were empowered to enter into any ract or agreement with any other railway company; and that y such contract should contain such covenants, clauses, provisoes, litions, and agreements as the contracting parties might respect-y think advisable and mutually agree upon; stated, that, in , the provisional committee of the Southampton and Dorchester way Company entered into an arrangement with the Great tern Railway Company for granting a lease of the Southampton Dorchester Railway to the Great Western Railway Company; , the Board of Trade having approved of the Southampton and chester Railway, it was proposed, under the sanction of the rd of Trade, that the Great Western Railway Company should don their agreement for the lease in favour of the London and h-western Railway Company; that the provisional committee he Southampton and Dorchester Railway Company were appre-ive that the London and South-western Railway Company ld, if allowed to have a controlling power in the direction of a pany for making the Southampton and Dorchester Railway, carry the same into execution according to the proposed line, instead, would forward the making of a railway from Salis-to Dorchester, and, to prevent their so doing, it was agreed be-n the Great Western Railway Company, the London and South-ern Railway Company, and the provisional committee of the hampton and Dorchester Railway, with the sanction of the Board rade, *that the Southampton and Dorchester Railway Company ld be so constituted and preserved as to be independent of the direct direct control of the London and South-western Railway Company;* the last-mentioned company should subscribe for such of the es in said Southampton and Dorchester Railway as had not then subscribed for by persons prepared to pay their deposits; and the Southampton and Dorchester Railway Company should t to the London and South-western Railway Company a lease of Southampton and Dorchester Railway; and that such agreement ld be carried out, according to the minute of agreement entered by the Great Western Railway Company, the London and South-

western Railway Company, and the provisional committee of the Southampton and Dorchester Railway Company, dated 16th January, 1845. The purport of that agreement was, that the Great Western Railway Company and the London and South-western Railway Company should immediately withdraw their support from all proposed lines which would compete with the Southampton and Dorchester Railway, or divert any of the legitimate traffic from it; that an agreement should be entered into between the Southampton and Dorchester Railway Company and the London and South-western Railway Company, for a lease to the latter of the Southampton and Dorchester line, and a clause to be inserted in their bill, authorising a lease to the London and South-western Company, the latter to pay, by way of rent, 20,000*l.* per annum, with half the net profits exceeding the rent; that conditions for combining the independence of the Southampton and Dorchester Railway Company should be inserted in the bill; the Board of Trade to decide upon all differences; the London and South-western Railway Company to provide and pay deposits before the meeting of Parliament, or within fourteen days afterwards, upon so much of the residue of the capital of 500,000*l.* as will comply with the Standing Orders and complete the subscription; that plaintiff and other persons had, at that time, subscribed for 3458 shares, but that deposits had not been paid up on all those shares; that it was agreed that the London and South-western Railway Company should be ultimately entitled to subscribe for 6542 shares, subject to reduction in the event of persons who had already subscribed for shares paying the deposit on more than 3458 shares; That a conference was held between the provisional committee of the Southampton and Dorchester Railway Company and the London and South-western Railway Company on the 21st February, 1845, when the following agreement was signed by both parties:—"That the 325,000*l.*, or thereabouts, about to be subscribed by the London and South-western Railway Company, shall be held by that company, as a part of the capital of that company, until the expiration of two years from the opening of the line; and that during such period that company shall nominate four of the twelve directors; that, after the expiration of that period, the London and South-western Railway Company shall be at liberty to sell by public auction, or tender, in such manner as shall be approved by the directors of the Southampton and Dorchester Railway Company, any part of the London and South-western shares, losing the nomination of one director for every 80,000*l.* nominal amount of shares sold by them;" that the said

agreement was acted upon in preparing the bill for incorporating the said Southampton and Dorchester Railway Company, and, accordingly, clauses were prepared by Mr. Bircham, the solicitor of the London and South-western Railway Company, and the solicitor of the provisional committee of the Southampton and Dorchester Railway Company, and inserted in that bill, to the following effect:— That the London and South-western Railway Company might become shareholders in said company to any extent not exceeding the sum of 330,000*l.**, so long as the capital should not exceed 500,000*l.*; but, in the event of the capital being increased to the extent of 180,000*l.*, then said company were to be at liberty to subscribe for an additional sum, not exceeding 70,000*l.*, towards such increased capital; the London and South-western Railway Company not to be at liberty to sell or dispose of any of their shares until after the expiration of two years from the opening of the railway, and then only by public auction or tender, or in such other manner as shall be approved of by the court of directors of the Southampton and Dorchester Railway Company. That the number of directors should be twelve, of whom four should be appointed by the directors for the time being of the said London and South-western Railway Company, out of their own body, in the event of their becoming shareholders to the extent of 330,000*l.*, or to any increased extent, and the remainder by the shareholders in the Southampton and Dorchester Railway Company, exclusive of the said London and South-western Railway Company. That, if said London and South-western Railway Company should at any time sell any portion of their shares in said Southampton and Dorchester Railway, they should, in respect of every 80,000*l.* of the capital stock which should be represented by the shares so sold by them, forfeit the right of appointing one director of the company. That the committee of the House of Commons struck out such clauses as being inconsistent with the Standing Orders, no notice having been given that the company would seek power to grant a lease to said London and South-western Railway Company. That said London and South-western Railway Company were privy to the application for the introduction of such clauses, and did not oppose, but, on the contrary, had approved of, such clauses. That, in pursuance of the said agreement of 16th January, 1845, said Southampton and Dorchester Railway Company and the London and South-

* This sum would be represented by 6600 shares at 50*l.*, and not 6500.

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western Railway Company executed an agreement, dated 7th November, 1845, for a lease of said Southampton and Dorchester Railway for a term of 999 years, at a rent of 20,000*l.*, and a moiety of the net profits after satisfying said fixed rent; and that the said London and South-western Railway Company have caused notice to be published of their intention to apply for an act to enable them to take such lease. That plaintiff is a proprietor in the Southampton and Dorchester Railway Company for ten shares, and has paid his deposits and calls thereon, and is entitled, as such, to ten votes in the election of directors; that the London and South-western Railway Company, according to said agreement, paid the deposits on 6500 shares in the Southampton and Dorchester Railway Company, and have since paid the calls thereon; and other persons had subscribed for and paid the deposits and calls upon the remaining 3490 shares, making in all 10,000 shares. That the said Southampton and Dorchester Railway is still in a course of construction. That, by an act intituled "An Act to amend the Acts relating to the London and South-western Railway, and to authorise the London and South-western Railway Company to buy, and the Guildford Junction Railway to sell, the Guildford Junction Railway," the London and South-western Railway Company was authorised, with the consent of a special general meeting of the proprietors of that company, to subscribe towards and become shareholders in the Southampton and Dorchester Railway Company, upon such terms and conditions as might be agreed upon between said London and South-western Railway Company and said Southampton and Dorchester Railway Company, to any extent not exceeding the sum of £400,000. That no agreement whatever, except that before stated, has been come to or entered into between the London and South-western Railway Company and the Southampton and Dorchester Railway Company; that, under said agreement, the said London and South-western Railway Company are entitled to hold 6500 shares, and no more, in said Southampton and Dorchester Railway Company. That, by the Consolidated Clauses Act, (8 Vict. c. 18), it was enacted, "That, at all general meetings of the company, every shareholder should be entitled to one vote for every share up to ten, and an additional vote for every five shares beyond the first ten up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred;" that the London and South-western Railway Company would be entitled, in respect thereof, only to 668

votes; that, in violation of their understanding with the Board of Trade, and the said agreement with the Southampton and Dorchester Railway Company, the London and South-western Railway Company have, by their directors or agents, purchased and contracted to purchase upwards of 2500 shares of the Southampton and Dorchester Railway Company, in the capital thereof, besides the 6500 shares so subscribed for by the London and South-western Railway Company, and procured many of them to be assigned or transferred to, and contracted or arranged that the rest of them shall be assigned or transferred to, various persons unknown to plaintiff, as the nominees or agents of the London and South-western Railway Company, and their directors, and in such numbers and proportions as to enable the London and South-western Railway Company, by the use of the votes in respect of such shares, in addition to such 6500, or even by abstaining from the use of such votes, and voting only in respect of said 6500 shares, to cause to be elected as directors of the Southampton and Dorchester Railway Company such persons only as the London and South-western Railway Company might direct or appoint. The bill then alleged that it was the intention of the directors of the London and South-western Railway Company to exercise this increase of power in the election of themselves or their nominees to the office of directors of the Southampton and Dorchester Railway Company, other than their proportion of four out of the twelve directors, and that they intended to cause deviations from the line of the Southampton and Dorchester Railway Company as sanctioned by the Board of Trade; and that such would be destructive, or at least very injurious, to the interest of the plaintiff and all the proprietors of the Southampton and Dorchester Railway Company, other than and except the London and South-western Railway Company; and that, by such increase of power, the independence of the Southampton and Dorchester Railway Company would be ruined. That the said London and South-western Railway Company had purchased said increased number of shares not for the purpose of deriving the legitimate profit thereof, as members of the Southampton and Dorchester Railway Company, but for the purpose of enabling the London and South-western railway company, in contravention of said agreement of 16th January, 1845, to prevent the opposition of the Southampton and Dorchester Railway Company to a competing line of railway from Salisbury to Yeovil. The bill then prayed "That it might be declared that said defendants, the London and

South-western Railway Company, are not entitled, until the capital of the Southampton and Dorchester Railway Company shall have been increased beyond 500,000*l.*, to vote in the election of said directors of the Southampton and Dorchester Railway Company, other than the four directors of such last-mentioned company to be selected from the London and South-western Railway Company, in respect of any greater number than 6500 shares of the Southampton and Dorchester Railway Company; and that the London and South-western Railway Company are not entitled, until such increase of capital, or the shares beyond 6500 purchased and contracted to be purchased by them shall have been sold or transferred, as hereby prayed, to give any greater number of votes in the election of such directors than such due proportion of votes, with respect to the votes which the holders of so many of the remaining 3500 shares as have not been purchased or contracted to be purchased by or on account of the London and South-western Railway Company, are entitled to give, as the votes in respect of such 6500 shares held by the London and South-western Railway Company would have borne to the votes which the holders of the remaining 3500 shares would have been entitled to give had the London and South-western Railway Company abstained from purchasing or contracting for the purchase of any of such 3500 shares; and that the London and South-western Railway Company may be decreed to sell and dispose of, to some persons or person other than the London and South-western Railway Company, or any person in trust for them, or otherwise to transfer to plaintiff, or as he may direct, for the benefit of himself and those on whose behalf he sues, or such and so many of them as will claim the benefit of such transfer, all shares in the Southampton and Dorchester Railway Company which they, or any of them, have purchased or caused to be purchased, or contracted to purchase, in their own names or name, or in the names or name of any other person or persons; plaintiff hereby submitting to pay the London and South-western Railway Company the amount which they have paid and contracted to pay for such shares, and to complete all such of the said contracts for shares as remain unperformed, so that the independence of the Southampton and Dorchester Railway Company may be maintained; and that, in the meanwhile, the London and South-western Railway Company, their officers and trustees, may be restrained by the order and injunction of this Court from applying for or requiring the registration of the transfer or assignment of any shares or share purchased by said London and

South-western Railway Company, or any persons or person in trust for them, or any or either of them, and from voting or offering any votes or vote in the election of any directors or director of the Southampton and Dorchester Railway Company, other than the four who are to be directors of the London and South-western Railway Company, on the 28th of February, 1846, or at any other time, in respect of any shares or share in the Southampton and Dorchester Railway Company, purchased or contracted to be purchased by or in trust for the London and South-western Railway Company, other than the 6500 shares, and from giving or offering in such election any number of votes in respect of the said 6500 shares beyond the same proportion, with regard to the number of the shares which have not been purchased by or in trust for the London and South-western Railway Company, as the London and South-western Railway Company would, in respect of the said 6500 shares, have been, at the time of the first making up and sealing of the register of shareholders in said Southampton and Dorchester Railway Company, on the 20th August 1845, entitled to give in proportion to the number of votes which the holders of the remaining 3500 shares would then have been entitled to give, had an election of directors of the said Southampton and Dorchester Railway Company been then in progress." The defendants, the London and South-western Railway Company, put in a general demurrer to this bill for want of equity, and also for want of parties, inasmuch as the shareholders who had sold or contracted to sell their shares to the London and South-western Railway Company were not made parties thereto.

Sir *L. Shadwell*, Vice-Chancellor of England.—It is not stated upon this demurrer that the Great Western Railway Company ought to be a party to this suit; for this reason, I suppose, because the bill takes up what I will call the off-set of the case. The question, which arises upon what may be called the conditions of the agreement, which this bill seeks to enforce, (the conditions themselves being only a part of and auxiliary to the principal agreement, which related to all the three companies), is this: the agreement upon the face of it is an agreement which extends during all time to bind the Great Western Railway Company not to interfere with the traffic upon the Southampton and Dorchester line. The bill is filed not for the purpose directly and avowedly of having a specific performance of the agreement which comprehends the three companies, but for having the subsidiary agreement carried into effect as between the Southampton and Dorchester Railway Company and

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the South-western Railway Company; that, however, is only a part, and can only be considered as a part, and relief cannot be given upon it, only as a part of the principal agreement, which binds all the three companies. It is plain to my understanding, that there cannot be relief in respect of that part of the agreement without seeking to have relief in respect of the whole; and it is plain to me that the Great Western Railway Company themselves are as necessary parties to a bill for relief, founded on the original agreement, as the company which is now made the sole defendant. That is one objection. Then there appears to be another objection, and that is, that this bill seeks to have relief through the medium of restraining the South-western Railway Company to the acquisition of 6500 shares; whereas it seems to me to be the true construction of the agreement, and so the parties themselves thought, that at any rate they are entitled to 6600 shares. The bill contemplates, in a certain event, the acquisition of shares to the amount of 400,000*l.*, which would be the addition of 70,000*l.* to the 330,000*l.* Now, the expression, you will observe, in the original agreement is 325,000*l.*, or thereabouts; but it is perfectly plain, if you contrast that with the subsequent condition drawn up by Mr. Bircham, that the real thing contemplated was the acquisition of 330,000*l.* worth of shares, that is 6600 shares. It may be a mere arithmetical mistake; but it is perfectly plain to me, that as the bill is framed, it has restricted the rights of the South-western Railway Company within a limit not sanctioned by the agreement. Taking it altogether, it also appears to me, that when it asks that the South Western Railway Company may be restrained from applying for or requiring the registration of the deed of assignment, pro tanto it does tend to delay the emancipation from their liabilities of those who have sold, whereas, if it be sought in any degree to tend to continue the liability of those shareholders who have already sold their shares, it is manifest that those shareholders should be parties; and my opinion is, that the demurrer should be allowed.—Demurrer allowed.

When a demurrer to a bill in equity on the ground of want of parties will be overruled without prejudice.

Wilson v. *Stanhope*, (10 *Jur.* 421, *April 24th*, 1846).]—The bill in this case was filed by Mr. H. H. Wilson, on behalf of himself and all other shareholders in a company provisionally registered, called "The London and Manchester Direct Independent Railway, (Remington's Line)," against the Hon. Leicester Stanhope, and others. It set forth a survey by Mr. George Remington of an intended line of railway to connect London and Manchester, in 1832, 1840, and 1841,

and that in 1845 attempts were made to form a company, which was abandoned or suspended; that in 1845 a scheme was projected, and was duly registered for carying on the line of railway by means of a capital of 3,000,000*l.*, in 60,000 shares of 50*l.* each; that other steps were taken as to branches and increase of capital, all of which were duly provisionally registered, advertisements inserted, prospectuses issued, committee of management and other officers appointed; that the original provisional committee, in association with other defendants on the record, continued to act as provisional committee; that the plaintiff, on his application, had thirty shares allotted to him, and paid his deposit, and executed the subscribers' agreement and the parliamentary contract. The bill then set forth, that, the scheme being at a premium, a rival line, alleged to be laid out by Mr. Rastrick, was started, under the name of "The Direct London and Manchester Railway, (Rastrick's Line);" and that the defendants had improperly abandoned Remington's line in favour of the rival scheme, contrary to the desire of the shareholders. The other allegations in the bill which it is necessary to refer to are stated in the judgment. The bill prayed an account of all costs properly incurred by the defendants in the formation of Remington's line; and that, when ascertained, they might be distributed rateably on each share; and that, as to all reserved shares, the defendants might be declared liable to those costs; that the defendants might be directed to pay the remainder of the money received for deposits, after paying the costs, to the plaintiffs, and retain it among themselves in due proportions; and that an account might be taken of all dealings and transactions of the defendants relating to the company during the time they had acted as the managing committee or provisional directors; and that, in taking such account, the defendants might be charged with the full amount of the deposits which were or ought to have been payable upon the shares which were reserved and not allotted, and also of all monies expended by them out of the company's assets in the purchase of shares in the same company, or of stocks or shares in any other company, and received by them by way of profit on the re-sale of any shares or stocks so purchased by them; also an account of all monies received for the consideration of abandoning Remington's line in favour of Rastrick's line, and other accounts. And the bill prayed various other relief. A demurrer was put in by Colonel Stanhope for want of equity, and also for that the other shareholders were not parties.

Knight Bruce, V. C.—The failure of the demurrer for want of

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equity in this case is too manifest to require any remark. The only other ground alleged by way of demurrer is the want of parties. The bill states various circumstances of alleged misconduct on the part of the persons to whom the whole scheme, and the steps towards the perfection of that scheme, were entrusted. It alleges that improper acts have been done, or acts of such a nature, and to such an extent improper, as to render it impossible to pursue the scheme. It alleges, besides the matters of detail to which I have referred, that the monies of the plaintiff, and of the other shareholders on whose behalf the plaintiff sues, have been obtained by fraud and misrepresentation, and for a purpose which has wholly failed. The latter part of the record runs thus:—"Charges that the number of shareholders in the said London and Manchester Direct Independent Railway (Remington's line) is so great, and the rights and liabilities of the shareholders are so subject to change and fluctuation by death and otherwise, that, save as herein stated, plaintiff does not know, and is wholly unable to discover, the names of the other shareholders; and, even if plaintiff were able to discover their names, it would not be possible, without the greatest inconvenience, to make them parties to this suit, and so to do would render it impossible to bring this suit to a hearing. Charges that the interest of the said shareholders, except the said defendants, are identical with those of the plaintiff in respect of the matters herein stated, or in respect of the property of the said company and the surplus thereof; and all the said shareholders other than the said defendants are fully represented by the plaintiff, and have a common interest in the relief hereby prayed." As to the non-ability to discover the names of the shareholders, I consider that so much of the charge as I have read must, for the present argument, be rejected by reason of the late act of Parliament referred to by Mr. Cooper, for the registration of joint-stock companies. I think that the allegation of ignorance is one that must be rejected, but that the allegation that a greater number remains, although there may possibly be cases in which that allegation would be too vague and loose, yet, when it is considered as applying to such an amount as those in question here, it does appear to me not too wide or vague. But, with regard to the latter part of these charges, I am of opinion, that, upon this record, the principle which one of our greatest judges has laid down, and upon which he acted in the case of *Cockburn* v. *Thompson* (16 Ves. 321), renders it necessary to overrule the demurrer for want of parties. It is not, however, necessary positively to decide that, because it is the rule of the Court formerly

ɔd, more generally practised than it is at present, or has been of ars, that, upon a demurrer, where the question is one of any or difficulty, it is not necessary to pronounce a final or conclu- inion; but that, if the Court sees that it is matter of difficult nt or of reasonable discussion, it may, and often does, overrule aurrer, saving the benefit of the question raised by it till the ; of the cause, or, in other language, without prejudice to the n. That is the course I propose to take here, to overrule the er, without prejudice to any question in the cause, and shall the costs, unless the plaintiff can shew that they ought to be d of now.

e v. *Muntz*, (10 *Jurist*, 914, *July 2nd, 3rd, 14th*, 1846).]—This ill by Thomas Doyle and J. W. Scrivener, on behalf of themnd all other shareholders of the company, called "The South-, Manchester, and Oxford Railway Company," against the ɔnal directors of the company. The bill, after stating the for- of the company and its provisional registration, and setting ıe parliamentary contract and subscribers' agreement, by the f which it was (amongst other things) provided, that, in the f the act or acts of Parliament for the undertaking not being d, and the amount subscribed by way of deposits proving in- ıt to discharge the costs, expenses, and liabilities which should ırred in the undertaking, that then the shareholders of the ıy, including the plaintiffs, should pay, allow, and discharge ciency rateably, and in proportion to their number of shares, ed to state, that, in September, 1845, the plaintiffs became re allottees, the former of twenty, and the latter of ten shares said company; and that, having paid the deposit upon such and signed the parliamentary contract and subscribers' agreeınd obtained scrip, they became and were shareholders in the npany during the whole period of the transactions mentioned bill; and that they still were such shareholders at the time was filed. The bill then went on to state, that the object of lertaking, as stated in the parliamentary contract and proes, upon the faith of which statement the shareholders had ıeir subscriptions, was "for making, constructing, and esta- ; a railway, to commence at or near the Andover-road station, South-western Railway, near High Clere, both in the county ts, together with two branch railways therefrom, to commence

To a bill by two shareholders in a company provisionally registered, on behalf of themselves and all other the shareholders, except the defendant, against the provisional directors of the company, complaining, that, by various acts of misfeasance on the part of the defendants, the objects of the company had failed, and praying either for a return of the deposits paid up, or for an account of the assets of the company, and the application thereof in discharge of the liabilities of the company, and a division of the surplus among the shareholders, in proportion to their interest, it was pleaded, that, at the time the bill was filed, one of the co-plaintiffs had sold his shares for value, and that all his interest in such shares was then vested in the assignee. The plea was allowed.

The rule, that a few of the shareholders of a company may sue on behalf of themselves and the other shareholders, will not enable a mere trustee, having no beneficial interest,

to represent the absent shareholders.

from, at, or near High Clere aforesaid; one of such branch railways to lead to and terminate at or near the Swindon station on the Great Western Railroad; and the other to lead to and terminate at the Didcot station on the said Great Western Railway." That, from the first publication thereof, the projected undertaking was very favourably received by, and continued in high estimation with, the public; and that the scheme was generally considered to be highly useful and advantageous, and one that was likely to yield large profits to the shareholders; and that the shares in such railway rose to a very high premium in the market. The bill then proceeded to state, that the defendants nevertheless, instead of carrying out the scheme as originally proposed, and according to the terms of the prospectuses and parliamentary contract, had entered into an arrangement with another company, called "The Oxford, Southampton, Gosport, and Portsmouth Railway Company," by which it was agreed, that, in order to save the expense of opposition, which would have been occasioned by both companies wishing to make the same line, the Oxford, Southampton, Gosport, and Portsmouth Railway Company should apply for an act for their proposed line of railway from Didcot, through Newbury, to the Andover-road station of the Southampton Railway; and that the Southampton, Manchester, and Oxford Junction Railway should apply to Parliament for an act for their proposed line of railway from a spot near to High Clere, on the South-western, through Hungerford, to Swindon; and that, as soon as the acts of Parliament should be obtained, the two companies should be amalgamated. The bill then stated that such arrangement was wholly inconsistent with the original objects of the company, and with the views with which the plaintiffs were induced to become shareholders therein; that, by means of such arrangement, the defendants had in fact abandoned to the Oxford, Southampton, Gosport, and Portsmouth Railway Company the most profitable portion of the undertaking to which the plaintiffs had subscribed, and had thereby rendered such scheme nugatory and abortive; and that, in consequence, any further prosecution of the undertaking would be prejudicial to the plaintiffs and the other shareholders of the company. The bill then stated, that such arrangement was the result not of any sound or honest discretion on the part of the defendants, exercised with a view to promote the real interests of the shareholders, but to meet private views of some of the defendants. The bill then stated, that the defendants, though pressed with abundant applications for shares, had re-

glected to allot a sufficient number of shares to raise the necessary amount of capital for the purposes of the undertaking; that they had reserved a considerable number of shares for the use of themselves and their friends, upon none of which had the deposits been paid up; and that, in consequence thereof, the capital which had been actually subscribed would be wholly insufficient for the purposes of the undertaking. The bill then stated, that the defendants had also applied part of the deposits of the company in the purchase of scrip at a premium, some of which they afterwards disposed of at a still higher premium, and the remainder of which they still retained in their hands. The bill then prayed, that it might be declared, that, under the circumstances therein stated, the defendants were bound to return, and that they might accordingly be decreed to return and pay to the plaintiffs the full amount of the deposits which had been paid by them upon their shares, together with interest; or in case the Court should be of opinion that the plaintiffs were not entitled to have the whole of such deposits returned, but that the same were liable in respect of the expenses incurred in the undertaking, then that an account might be taken of all costs, expenses, and disbursements which had been properly paid or incurred by the defendants, or any of them, in or about the matters therein mentioned; and that the amount of such costs, expences, and disbursements, when ascertained, might be divided rateably on each share of the company; and that, for such purpose, the defendants might be held to be entitled to, and to represent, and be liable upon and in respect of all such shares as were so reserved, or had not been allotted by them, as therein mentioned, and on which no deposit had been paid; and that the defendants might be decreed to return to the plaintiffs the residue of the deposit so paid by them, after deducting thereout what, upon making the division thereinbefore mentioned, should appear to be the proportionate amount in respect of each deposit; or that an account might be taken of all dealings and transactions of the defendants relating to the company during the time they had acted as the managing committee or provisional directors; and that, in taking such accounts, the defendants might be decreed to pay to the company the full amount of all deposits upon such shares of the company as had been reserved, or not allotted by them, in manner therein mentioned, and on which the deposit had not been paid; and also with all monies paid out of the assets of the company, or received by way of profit and commission on the purchase or sale of shares in the said company; and that the

Cases in Equity.

Doyle v. Muntz.

defendants might be charged in such accounts with all losses occasioned to the company by their misconduct or neglect. To this bill, B. B. Williams, one of the defendants, put in a plea, stating, that, before the filing of the said bill, the ten shares in the company, in the bill mentioned to be allotted to the plaintiff J. W. Scrivener, and each and every of them, and all the right, title, and interest of the said J. W. Scrivener in and to the same shares, and each and every of them, had been, and, as the defendant believed, for full and valuable consideration paid to and received by the said last-named plaintiff, well and effectually sold, assigned, and transferred by him to Henry Heald, of &c., or to some other person whose name and address were unknown to the defendants, and by whom the same were afterwards, in like manner, sold, assigned, and transferred; and that, at the time when the said bill was filed, the said ten shares, and each and every of them, and all the right, title, and interest in and to the same, under and by virtue of such sale, assignment, and transfer, or sales, assignments, and transfers, were well and effectually vested in the said Henry Heald, as the purchaser thereof for full and valuable consideration; and that the said last-mentioned co-plaintiff had not, at the time when the said bill was filed, nor at any time since, nor had then, any right, title, or interest to or in the said ten shares, or any or either of them.

Wigram, V. C.—The defendants in this case, including Benjamin Bacon Williams, are the provisional directors of the company called "The Southampton, Manchester, and Oxford Railway Company;" and the bill prays, amongst other things, an account of the assets of the company, and the application of such assets in discharge of the liabilities of the company, and a division of the surplus among the shareholders, including the plaintiffs, in proportion to their interests. For the purpose of explaining the case which I am about to decide, it will be sufficient to say, that the bill alleges, that the plaintiff Scrivener, in September, 1845, became and was the allottee of ten shares in the company; that he paid the deposits upon those shares, signed the subscribers' agreement and parliamentary contract, and obtained scrip, and, in fact, that he became and was a shareholder in the company during the several transactions which form the subject of complaint in the bill; and the plaintiff Scrivener claims in the bill to be still a holder of these ten shares. The plaintiff Doyle is the holder of twenty of such shares. To this bill, the defendant, B. B. Williams, has put in a plea in bar, asserting that

&c. [His Honor read the plea.] The question in this case is, whether this plea in bar is good or not? For the purpose of trying its sufficiency, I will assume, that, at the time the bill was filed, the ten shares, and each and every of them, and all right, title, and interest in and to them, by virtue of the sale, were well and effectually vested in Heald, for valuable consideration. Then, two questions arise; namely, first, did that fact, if well pleaded, deprive the plaintiff of all right to discovery and relief?—that is, is the plea good in substance? Secondly, is it well pleaded? In considering the former question, I assume that the latter is to be answered in the pleader's favour. Now, in considering whether the plea is good in substance, the case must depend upon, and abide by, the same considerations which would apply if Scrivener were the sole plaintiff. If Doyle were to die before the hearing, and his representative did not revive the suit, Scrivener would become the sole plaintiff. And if that want of interest in Scrivener, which the plea suggests, and that state of circumstances would prevent him, as sole plaintiff, from obtaining relief at the hearing, the circumstance of Doyle having his present interest will not alter the case. The bill, if that fact had appeared upon the face of it, would, according to the cases, have been demurable. (*King of Spain* v. *Machado*, 4 Russ. 225; *Makepeace* v. *Haythorne*, Id. 245; *Small* v. *Attwood*, 1 You. & C., Exch., 37). That the ten shares were assignable as between Scrivener and Heald, does not admit of doubt. That they were also assignable as between those parties on the one side and the company on the other, must, upon these pleadings, be assumed. There is nothing in the bill to exclude it, and nothing to make the assignment illegal in the abstract. (*Young* v. *Smith*, 4 Railw. Cas. 69). Assuming that the ten shares were assignable, and that they were well assigned to Heald, what personal interest has Scrivener to enable him to sustain the suit? It was for Heald, and not for Scrivener, to determine whether the arrangements alleged to have been come to between the Southampton, Portsmouth, and Gosport Railway Company, and the Southampton, Oxford, and Manchester Railway Company, could have been supported,—whether the acts of the provisional directors would be rejected or adopted, which the bill alleges to have been done by them without consulting the shareholders. And upon the same hypothesis, the manner in which the provisional directors have dealt with the shares and the assets of the company, is a matter in which Scrivener can have no personal interest, so far as the acts of the provisional

directors may have merely checked the prosperity of the concern. But it was said for the plaintiffs, that, although Scrivener, as a retired shareholder, had no direct interest in the prosperity of the concern, he has an interest in seeing that the assets are properly applied towards the discharge of the liabilities to which he made himself personally liable. This argument, if admitted, would strike out every part of the prayer, and would convert the bill into a bill of indemnity merely; giving to Scrivener a character different from that in which he appears upon the record. It is necessary, however, in my view of another part of the case, that I should suppose Scrivener, under some circumstances, to be entitled to such an indemnity as the argument suggests. The questions then are, do those circumstances exist here? and are the statements in the bill such as to entitle him to indemnity, treating the prayer of the bill as adapted to that purpose? I have read every word of the bill for the purpose of ascertaining whether such a case is suggested upon the record; but I do not find it suggested in any part of the bill. There is no suggestion of any deficiency of assets, which, as between Scrivener and the other shareholders, might render him liable to contribution. Nor is a case stated, from which it is to be inferred that Scrivener has made himself personally liable for the demands of strangers against the company, if any such exist. The conclusive answers to these appear to be, the fact of the assignment of Scrivener's shares to Heald, and the absence of any express contract between them which would constitute Heald the owner of the assets of the company, and disentitle Scrivener to indemnity out of those assets. A person who sells his interest in a concern cannot, without an express contract, insist upon his right to interfere in the affairs or conduct of the concern after such sale. If, however, such a case exist, it is incumbent on Scrivener to shew it. The relief asked by this bill, unless warranted by some contract between Scrivener and Heald, is in derogation of Heald's rights. My conclusion, therefore, as far as relates to Scrivener, is, that, if Scrivener has sold his shares to Heald, the bill does not state a case, shewing that Scrivener has any personal interest in the concern entitling him to relief in this suit in respect thereof. But it was said that Scrivener, having signed the subscribers' agreement and the parliamentary contract, and nothing having been done to substitute Heald for Scrivener, he, Scrivener, remains a trustee, or is to be viewed as a trustee, for Heald, and in that character represents Heald upon the record. Without repeating that the character in which

vener is suing here is not that of trustee, my opinion is, that vener cannot sustain this suit in the view of the case above ested. But it was said, that this being a bill filed on behalf of plaintiffs and all other the shareholders, Heald, in respect of his ficial interest, is included in the general description of "other eholders." That argument is not strictly accurate in point of uage. "Other shareholders" must mean "holders of shares other those held by the plaintiffs;" and that observation is not mere- rmal. The Court, in cases like this, permits a small number of eholders to sue on behalf of themselves and others, assuming that absent shareholders are adequately represented by parties having same interest as themselves. But that rule would not permit a trustee who has no beneficial interest to represent the absent eholders, that is, enable a trustee to represent his own cestui que . If Heald is a shareholder, there is no reason why he should be in the suit, and why the real case should not be put upon the rd. It is further said, that the objection resolves itself into an ction for want of parties, and that the plea, being a plea in bar, ld on that account fail. With that argument I do not agree. A of want of parties admits the plaintiff to be entitled to relief, ided the proper parties are brought before the Court; and it is impossible to read this record as containing such an admission. l the Court, at the hearing of the cause, permit the amendment, st the record asserts that Scrivener is the owner of shares? If vill Heald join with Scrivener as plaintiff? and, if he will not, he should be made defendant, will he adopt or reject the acts of vener in the suit? These questions appear to me most material nsidering the case. In order that the plaintiff may sustain his against the plea, it is not enough to shew that, by means of some ation to be made in the suit, and of some possible course to be n, the suit is to be made available. It must be shewn, that, ac- ing to the case made by the bill, the plaintiff will necessarily ntitled to some relief, whatever course Heald may take. The admits the allegations in the bill to be true, but, unless it fol- that relief must be given according to such allegations, in spite he assignment of the shares, the plea will be good. The rule down by Lord Eldon in *Kemp* v. *Pryor*, (7 Ves. 245), reversing former opinion, and after a second argument, must, I consider, y, for the present purpose, to a plea of this sort. The remaining tion, namely, that as to the form of the plea, is one of greater

difficulty, as it appears to me, than that which I have noticed. I do not refer to that part of the plea relating to the assignment, upon which, standing alone, there would be a good deal of doubt, for that, I think, is made clear by what follows. It means, that there has been a sale or assignment directly from Scrivener to some one else, who has assigned them to Heald; and there is a positive averment, that, at the time of filing the bill, Heald was the owner of the shares. The difficulty I have felt as to the form of the plea, and which has not been wholly removed, is this, that the plea is so general,—that there is no detailed statement as to what the real transaction is, which, the defendant says, amounts to a sale of the shares, or the assignment of them. It is possible, although I admit it is scarcely to be said to be reasonably probable, that the plaintiff did not know what the transaction was, if there was one which, it must be assumed, the plea alluded to. This has been the occasion of the delay in my giving judgment in this case, as to the manner in which I should deal with the plea. The course which I shall take is that which certainly will best meet the justice of the case, and by which no rule of law is violated. I will allow the plea, but give the plaintiff leave to amend, reserving the costs of the plea to be disposed of until the hearing of the cause, or further order.

On a bill filed by one of the provisional committee on behalf of himself and all other parties, except the defendants, interested as partners in a railway company which had been projected, but in which no shares had been allotted, and which had been abandoned, for an account of the partnership debts and credits, and for winding up the concerns of the company, a demurrer for want of equity and for want of parties was overruled, without costs and without prejudice to any question.

Sharp v. *Day*, (10 *Jurist*, 469, *May* 4, 1846).]—The bill in this case was filed by the plaintiff, on behalf of himself and all other persons interested as partners in the partnership or company called the "East Riding Junction Railway Company," except such of the partners in the same as were named as defendants, against W. B. Day, J. S. Richardson, J. Torr, W. N. Depledge, W. Stead, W. Briggs, T. Newmarch, J. Bennett, G. Cammell the younger, and C. West. It set forth, that, about the month of October, 1845, the defendant, W. B. Day, together with Mr. Goddard, Mr. Torr, and F. W. Hudson, and other parties, projected a partnership or company, to be called as above, for the purpose of making a railway, commencing at the town of Great Driffield, on the Bridlington branch of the Hull and Selby Railway, and terminating at Melton, in Yorkshire; that two prospectuses were issued, to the latter of which were appended the names of the defendants, and of thirty-six other persons, constituting the provisional committee, and inviting persons to become members of the company, and stating that the company had been provisionally registered; that the capital would consist of £350,000 in 17,000

shares of 20*l.* each, with a deposit of 2*l.* 2s. per share; that the liability of the subscribers would be confined to the extent of their deposits until the act of Parliament should be obtained, and afterwards to the amount of their shares; and that applications for shares were to be made to Mr. Preston, solicitor, Kingston-upon-Hull. The bill further stated, that advertisements to a similar effect were inserted in several newspapers. That the plaintiff, about the 9th October, became a member of the provisional committee, the defendant W. B. Day acting as secretary of the company pro tem. and without salary; but no shares had ever been allotted either to the plaintiff or any other of the provisional committee, or to any applicants; but that, in December, the members of the provisional committee resolved, by a majority of eight, to bring the undertaking to a conclusion, and that the expenses which had been incurred should be defrayed by a contribution of 10*l.* by each member of the provisional committee, the same to be paid into the bank of the Yorkshire Banking Company, at Hull or at Leeds, to the credit of Mr. Carlile and Mr. W. E. English, of Kingston-upon-Hull, bankers, as trustees of the audit committee, the defendants being and acting as such committee. That several payments were made agreeably to this resolution; but that Messrs. Carlile and English had never accepted or acted in the trust, the monies which were paid being paid or transferred to the defendants in trust for the liquidation of the liabilities of the company. That a report was made by the audit committee on the 31st December, 1845, announcing that the liabilities of the company amounted to 1545*l.* That the provisional committee came to a resolution, that each of its members should contribute as his portion the sum of 30*l.* on or before the 8th January then next; but, at the date of the last-mentioned resolution, the provisional committee had reached to the number of eighty-three members, and that the result of the contribution as proposed would be a sum of 2490*l.*, instead of 1545*l.*, the actual amount of the liabilities. That, out of monies received in pursuance of this resolution, and out of other property of the company or partnership, all the liabilities of the company had been discharged, except 220*l.* due to the solicitor, and 45*l.* which was claimed by the defendant Day. That the defendants, out of the monies contributed, had a balance in their hands more than sufficient to pay what was due; and that, under the circumstances aforesaid, the plaintiff was justified in declining to contribute his quota of 30*l.*, although he was willing to pay what was fairly and justly payable by him. That an

action had been brought against the plaintiff by Day for work and labour, services, care, diligence and attendance, and for money paid to his use; and that a verdict had been obtained for Mr. Day at the late spring assizes at York for 45*l.*, but leave was given to move to enter a nonsuit. That whatever was due to Day was payable out of the monies in the hands of the defendants, which were to be treated as trust funds for the purposes of the company. It was charged, that Day's acceptance of the office of secretary was incompatible with his continuance as a member of the provisional committee, and that he had in his particulars of his demand in his action claimed to be paid as secretary, from 1st October, 1845, the sum of 74*l.* The bill then prayed, that an account might be taken of the monies and property belonging to the company or partnership which had come to their hands, or the hands of any person by their order or for their use, in trust for the partnership or company, and of all monies which, by virtue of the resolutions come to by the parties, had been paid to or possessed by the defendants for the purpose of discharging the debts and liabilities of the company; that an account might be taken of the debts and liabilities of the partnership or company now remaining unsatisfied; that the outstanding property of the company or partnership might be collected and applied, under the direction of the Court, so far as it would extend, towards the discharge of the debts and liabilities, and that, if necessary, a receiver might be appointed by the Court to carry into effect the above purposes; that the defendants might be restrained from collecting or recovering the property or monies of the company or partnership, or any part thereof, or from interfering therewith, or from applying any monies or property paid or subscribed, or hereafter to be so, in consequence of the resolutions, otherwise than, under the direction of the Court, in discharge of the debts of the company, and for the purposes for which such monies had been subscribed; and that the defendants might be restrained from prosecuting an action at law against the plaintiff, or any other proceeding at law touching the matters aforesaid. A demurrer was put in to this bill for want of equity, and another for want of parties.

Knight Bruce, V. C.—In this case the bill may, I think, be understood as alleging that the defendants are in possession of funds, in effect as trustees for purposes in the fulfilment of which the plaintiff and other persons, who are so numerous as to render the junction of them individually in a suit substantially incompatible with its pro-

secution, and on whose behalf and on his own he sues, are interested; and that the defendants have acted, and intend to act, in contravention of those purposes; and it prays relief upon that footing. Whatever I may think of the wisdom of instituting such a suit, as upon the face of this bill it appears to be, and assuming the professed objects of the bill to be the true objects,—whatever I may consider as being the probable fruit of this litigation,—I am apprehensive that if I allow the demurrer, I shall be introducing a new rule, or, by making them more strict, altering old rules now in use. There seems to be enough to enable it to be said that the bill is not born dead. Whether it is likely to enjoy a prosperous, a long, or an easy life, is a different question. It is not, however, without doubt that I hold it to be at the present stage sustainable; nor is the question of the applicability of the principle upon which I proceeded in *Richardson* v. *Larpent*, (2 You. & C. 507; 7 Jurist, 691), the only ground of doubt that I have. But doubting, I must allow the plaintiff to call for answers. Let the demurrers be overruled, without costs, without prejudice to any question in the cause.

Bell v. *Lord Mexborough*, (10 *Jurist*, 393, *June 6th and 7th, and July 31st*, 1846).]—This was a bill by Robert Courtney Bell and Robert Chatfield, on behalf of themselves and all other the shareholders of the company called "The Direct London and Exeter Railway Company," except such of the shareholders as were therein named defendants, against various members of the provisional committee and the committee of management. After stating the formation of the said company, and its provisional registration, it set forth the prospectus of the company, which was put into circulation in the month of September, 1845, containing a list of the provisional committee, and also a list of the committee of management, from which it appeared that both the demurring defendants, Capel and Allen, were amongst the former, but were not amongst the latter; and setting forth the objects of the intended railway. The bill then stated that plaintiffs applied to the committee of management for shares, and that they received letters of allotment accordingly, duly issued by the committee of management; that plaintiffs duly paid up the deposit on their shares, and duly executed and subscribed the parliamentary contract and subscribers' agreement. The bill then set forth the parliamentary contract, dated the 30th October, 1845, whereby the provisional directors were named, but did not include the demurring defendants,

Bill by shareholders in a railway company, provisionally registered, on behalf of themselves and all other the shareholders, except the defendants, against various persons, including C. and A., whose names appeared on the prospectus as forming the provisional committee, and against the committee of management, amongst whom C. and A. were not, alleging that they were induced to become shareholders in said company from seeing the names of the provisional committee; that the defendants, including C. and A., accepted 150 shares each, which were allotted to them, but that they had not been duly registered as shareholders, and had not signed the parliamentary contract nor the subscribers' agree-

ment, and had not paid up any part of the prescribed deposit; that the committee of management refused to enforce payment thereof, and had been guilty of various other acts of misfeasance, by reason whereof the objects of the company had wholly failed: praying an account of the assets, including the unpaid deposits, a receiver, and a due administration of the assets, &c. Demurrer by C. and A., for want of equity, allowed.

and the necessary and usual powers thereby given to them for promoting the undertaking; that, by the subscribers' agreement, bearing the same date as the parliamentary contract, the appointment of said provisional directors, and all the powers, &c. in the parliamentary contract contained, were confirmed; that said parliamentary contract and subscribers' agreement were respectively duly executed by the defendants, the provisional directors, and all other the shareholders of said company, save and except the defendants, and including the demurring defendants. The bill then insisted, that, although the last-named defendants had never duly executed said parliamentary contract or subscribers' agreement, each of such defendants consented to become one of the members of the provisional committee of said company; and that they had each accepted shares in the said company; that the provisional directors or committee of management caused a letter to be sent to all the members of the provisional committee except those who formed the committee of management, in the following terms:—"6th October, 1845. Sir,—The committee of management of the Direct London and Exeter Railway having set aside 150 shares for each member of the provisional committee, I am directed to request that you will inform me, on or before Friday, 10th October, whether you, as one of that body, accept the same," &c. That the several members of the provisional committee (including the demurring defendants) sent answers to such circular, respectively signed by them, agreeing to accept the whole of the shares so offered to them, and requesting that such shares might be set aside for them; and the same were accordingly duly set aside and allotted to them in the capital of said company. The bill then proceeded to state, that various defendants, amongst whom were Capel and Allen, never paid up their deposits, and refused to do so; and that the managing committee refused to compel payment thereof. The bill then stated various other acts of misconduct and misfeasance on the part of the managing committee, in consequence of which it alleged the objects of the said company had entirely failed; that, unless the defendants, who had not paid up their deposits, were compelled to do so, the company would be insolvent, and plaintiffs liable to be sued in respect of their liabilities. The bill then contained various charges for the purpose of clothing the defendants (amongst others Capel and Allen) with the character of shareholders, all of which charges, together with a more full analysis of the statements affecting them, will be found in His Honor's judgment. The bill prayed an account of the dealings

and transactions of the said managing committee, and that they might be decreed to make good any loss incurred by the various acts of alleged misconduct; and that an account might be taken of all the property and assets of the said company, including therein the several amounts now due from the said defendants, &c., including Capel and Allen in respect of the deposits on their said respective shares so remaining unpaid as aforesaid; and for a receiver; and for a due application of the assets in payment of the liabilities of the company, and for general relief. To this bill the defendants Capel and Allen put in a general demurrer for want of equity, and also a demurrer for want of parties. The whole argument was on the question of equity.

Sir *L. Shadwell*, Vice-Chancellor of England.—In this case the bill is filed, stating a very long and strange story about this projected railway to Exeter in a direct line; and the demurrer before me is a demurrer of two gentlemen, Messrs. Capel and Allen. It rather appears to me, that, if they were to be considered as shareholders, who, in that character, had made themselves accessory to the many acts of misfeasance which are stated up and down in this bill, there might be some ground for overruling the demurrer; but the question really is, whether anything is sufficiently stated so as to enable the Court, upon the statement contained in this bill, to lay hold of Messrs. Capel and Allen as persons responsible. Now, I believe, at the time when the matter was before me, I tried to collect, as well as I could, what was the precise effect to be attributed to the different statements. The language, as regards these gentlemen, appears to me to be purposely made obscure and ambiguous; but it results, I think, upon a comparison of all the passages, to this: that letters were written to them, and to other persons, proposing to them to take shares, and that shares were allotted to them. The expression in one place is, that they accepted the shares; but then it is plain that by the term "acceptance" "*taking*" is excluded, because it is expressly averred that they never have taken the shares. Now, there are several passages (and I will state every one of them) in which their names are mentioned. The first time their names are mentioned is in the prospectus, which is published in September, 1845, and it states the names of several of the persons as members of the provisional committee, and particularly amongst others, of which there are many, are found the names of Capel and Allen. Well, then there is a statement made about the subscribers' contract and the parliamentary contract, and so on; and the naming of the provisional committee, which does not, in the

least degree, affect Messrs. Capel and Allen; and then it says, "that the parliamentary contract and subscribers' agreement were respectively duly executed by the said several defendants therein mentioned as the provisional directors of the company, and all other"—now this is the extraordinary thing—"and all other the shareholders of the said company, save and except" (amongst other persons) "Messrs Capel and Allen." Now, there they seem to be excepted as persons who ought to be excepted in the description of shareholders in the company. Then, in some few passages afterwards, matters are stated with regard to the assets, and so on; then that certain letters were written; and then it states this: "That the plaintiffs have discovered, as the fact is, that the several members of the provisional committees sent answers to such last-mentioned circular, as to the greater part of such members agreeing to accept the whole of the shares" (that is, some circular proposing to the parties to take shares) "so offered to them, and as to the remainder agreeing to take a considerable proportion of such shares, and particularly the plaintiffs, shew that the defendants" (naming several persons, including Capel and Allen) "all severally wrote and sent answers, respectively signed by them, to the committee of management, accepting 150 shares each, and requesting that such a number of shares might be set aside for them; and the same were accordingly duly set aside and allotted to them in the capital of the said company." Then there follows this: "That the plaintiffs have discovered, that, although all the other members of the provisional committee who so agreed to accept shares as aforesaid, and, in fact, the plaintiffs and the other shareholders of the company, except" (amongst other persons) "Capel and Allen, have never taken up the shares which were so set apart for them, and which they agreed to take, and were allotted to them as aforesaid; neither have they paid the deposits thereon, nor any part thereof; and that they now positively refuse to pay such deposits; and the managing committee or provisional directors of the company refused to compel or enforce payment thereof." Here it distinctly appears, that, though, as it is stated, letters were written offering the shares, and answers were given saying they would take the shares, that, in fact, they never have taken up the shares; therefore, it is a sort of acceptance which is free and wholly independent of the fact of taking, and it is, to be sure, a very singular mode of viewing the acts of the parties, Capel and Allen. In the next place in which they are mentioned, there is a statement of misfeasance by

those who were the acting parties. It is stated, "that, under the circumstances aforesaid, and particularly in consequence of certain defendants" (including Capel and Allen) "having neglected to pay their aforesaid deposits, it became impossible to pay the amounts required for making the deposits required by the order of the Houses of Parliament, and that the objects of the company have consequently entirely failed." And there is a statement which, for the life of me, I cannot understand; there must have been something wrong in the copying of it, as I suppose; but it is in that passage which follows the applications and the requests: it says, "that a great number of persons,"—not including Capel and Allen,—"a great number of persons allege" (that is to say, the present provisional directors allege) "and pretend, that, under the circumstances, and owing to the divisions aforesaid," (that is, the disputes among themselves), "and inasmuch as the defendants," a great number of persons, including Messrs. Capel and Allen, "and particularly inasmuch as," it is not said what they do yet, "inasmuch as Capel and Allen and others, and particularly inasmuch as the last-named defendants, although such co-partners, have never executed the parliamentary contract or subscribers' agreement, or any other deed or covenant binding them to take shares in the company, they are wholly incapable of enforcing or requiring payment." Now, it is manifest something is omitted there,—it does not form a complete sentence: "they are wholly incapable of enforcing or requiring payment of any sums which may be due from the defendants, or any of them, in respect of their aforesaid deposits, or from any of the other defendants," (naming several people, including Capel and Allen); "and pretend that they never became or have been registered as shareholders in the company, and that they are not bound to take up or pay the deposits on their aforesaid shares." The defendants Capel and Allen are not mentioned there. "And the defendants Capel and Allen allege and insist, that several others of the defendants have never duly registered, or have signed the parliamentary contract or subscribers' agreement, and that they are not qualified to act as provisional directors of the company; whereas the plaintiffs charge the contrary of all such pretensions to be true." Now, this charge includes, amongst other things, the charge that they have done that very thing which, before, it had been charged that they had not done; and I cannot but myself think, that, if charges are found of that nature, which are inconsistent with a positive state-

ment, which statement is most explicit and in detail, it must be taken to be a fact upon which the bill means to rely, rather than its general allegation, that the contrary of the existence of the negative is true. Then comes a very long charge, which does not affect Capel and Allen: "and that, independently of the amount of the deposits so due from the defendants," including Capel and Allen and others, "large sums of money are due from numerous individuals on various accounts." How anything can be due from the party before he actually becomes a shareholder, I really do not understand. Then it charges, that, in case several parties, including Capel and Allen, or any of them, have not been registered as shareholders in the company, each and every of the said last-named defendants consented to become, and accepted the office of, a member of the provisional committee of the company; and that they assisted in the formation of the company; and that it was upon the faith of their, or many of them, having joined in such provisional committee, that the project was formed; and that the plaintiff and the other shareholders of the company consented to take shares therein, and paid their deposits upon such shares. Now, it is very remarkable with respect to that; it seems to represent that the parties are bound by holding out something as an inducement, upon which the plaintiff consented to take his shares, and so became implicated in the affairs of the company. But there is no distinct allegation here, nor can I find out in any part of the bill at what time it was that he did exactly agree to take the shares. The plaintiff, I think, took his shares on the 6th October, and it was stated that the letter was written on the 15th; and when the answer was written, we do not know; and whether anything else was done independently of the answer, we do not know; but, with respect to this particular passage, it is stated, "that the defendants consented to become, and accepted the office of members of the provisional committee of the company, and they assisted in the formation of the company; and it was upon the faith of their, or many of them, having joined in such provisional committee, that the project was formed." But how do I know, upon the expression "their or many of them," that that necessarily includes Capel and Allen? and so, at the very point upon which it appears to me the plaintiff means to rest his equity, Capel and Allen happen at once to be, if I may use the expression, brought on and taken off; because, instead of relying upon the expression, "that it is upon the faith of their doing it," the expression goes to qualify and nullify it, by saying, upon the faith of

"their or many of them having joined;" and the consequence therefore is, that, according to that mode of stating the case, though it may be true that the plaintiff did join and did become implicated in the affairs of the company, it might have been upon the faith of others having joined the company than merely Capel and Allen; and it does appear to me, upon the whole, that there is no case stated which can in the least give the plaintiff an equity against Capel and Allen; and my opinion therefore is, that the demurrer ought to be allowed.—Demurrer allowed.

Lewis v. *Billing*, (10 *Jurist*, 851, *June 30th and July 1st*, 1846).]—This was a demurrer to a bill filed by the plaintiff, as one of the partners in "The Wolverhampton, Chester, and Birkenhead Railway Company," against Martin Billing and the members of the managing committee of that company, to restrain an action at law commenced against the plaintiff in the name of the defendant Martin Billing. The bill stated several circumstances attending the formation of the company. That the said proposed company or partnership was, in October, 1845, duly formed and constituted, and the defendants therein mentioned, (being all the defendants except Martin Billing), together with the plaintiff, became partners therein. That such defendants, as the managing committee, received considerable sums of money on behalf of the said company, and, by reason of such receipt, they had got into their hands, and had in their possession, upwards of 3000*l.*, constituting the partnership assets of the said company, and applicable in discharge of its liabilities. That there were debts of the said company outstanding which such defendants ought to discharge out of the partnership assets so in their possession as aforesaid, but which they refused to do. That, amongst the outstanding debts of the said company, was a debt due to the defendant Martin Billing, for printing and engraving done on behalf of the said company; and that the plaintiff is liable at law, as a partner in the said company, for the said debt, and for the other outstanding debts of the said company. That a considerable portion of the debt which was originally owing to the said defendant Martin Billing had been paid by the other defendants into the hands of agents nominated by and on behalf of the said Martin Billing; and the said debt had been assigned by the said Martin Billing to the said other defendants. That the said Martin Billing, notwithstanding such payment and deposit as aforesaid, had, at the request of the said other defendants, brought an

Bill filed by one of the shareholders against a creditor and the members of the managing committee of a railway company, stating that the committee were suing the plaintiff in the name of the creditor, and that they had monies in their hands applicable to the payment of the liabilities of the company; asking a general account; and praying that the defendants might be restrained from suing the plaintiff at law. Demurrer, for want of equity and for multifariousness, overruled.

action against the plaintiff for his said debt, as a trustee for and on behalf of the said other defendants, and had been guaranteed and indemnified by them against all such costs, charges, damages, losses, and other risks to be incurred or sustained by reason of the said action, or by reason of the same being brought against one only of several co-contractors, or otherwise, in respect of the said debt. That the defendants, other than the said Martin Billing, are now availing themselves of the said action of the said Martin Billing for the purpose of indirectly compelling the plaintiff to pay the said sum. The bill also charged, that the other debts of the said company left unpaid as aforesaid, had been left unpaid in order that the said defendants, other than the said Martin Billing, might sue in the names of the creditors to whom the same are owing, and might thereby indirectly compel payment of the said sum of 100*l*. There was also a charge, that the defendants ought to set forth an account of the number of shares allotted by the said company, and of the payments made on them. The bill also contained a charge in the following words: "That the said defendants ought to set forth an account of all cheques signed by them, or any of them, on the assets of the said company, with the dates thereof, and by whom each was signed, and in what manner and for what purposes the amounts deducted for have respectively been paid and applied, and whether, in such case, the drawing of the cheque and the application of the money was with the sanction of the said committee, and in what manner such sanction was given; that the persons among whom they intend to distribute the said monies are, with the exception of the plaintiff, all the partners in the said companies; and that such persons are in some manner, though they refuse to disclose in what manner, interested in the relief hereby sought, and necessary parties to this suit; and the said defendants are well acquainted with the names and addresses of such persons, but they refuse to inform plaintiff of the names and addresses of such persons, and plaintiff is ignorant thereof." And the bill further contained a charge, that such persons were very numerous, and more than 200 in number; and that their interests, so far as they are interested in this suit, were identical with those of the defendants other than the said Martin Billing, and that they are sufficiently represented in this suit by the said defendants. And the bill prayed, that the said defendant Martin Billing might be restrained from prosecuting the said action at law, and from commencing or prosecuting any other action or suit against the plaintiff in respect of his said debt; and

that the said other defendants might be restrained by the like order and injunction of this Court from prosecuting the said action in the name of the said Martin Billing, or otherwise, and from bringing any other action against the plaintiff in the name of the said Martin Billing, or in the name of any creditor of the said company, in respect of any debt due from the said company; and that the said last-mentioned defendants might be restrained from distributing, paying away, or parting with the balance of the said partnership assets of the said company, or any part thereof, except in payment of the liabilities of the said company. To this bill the defendant Martin Billing demurred generally for want of equity; and further, because the bill was exhibited against the defendant Billing, and the other defendants, for several distinct matters and causes, in many whereof, as appeared by the said bill, the defendant Billing was not in any manner interested or concerned, by reason of which distinct matters the said bill is drawn out to a considerable length; and this defendant was compelled to take a copy of the whole thereof, and, by joining separate and distinct matters together, which do not depend on each other, in the said bill, the pleadings, orders, and proceedings would, on the progress of the said suit, be intricate and prolix, and put defendant to unreasonable and unnecessary expense in taking copies of the same, although several parts thereof no ways relate to or concern him. He also demurred ore tenus, for want of parties, as no shareholders were made parties.

Sir *L. Shadwell*, V. C. of England, without hearing the counsel who appeared in support of the bill.—It is my opinion that this demurrer ought to be overruled. It may, perhaps, be true, that, in detail, the circumstances stated in the case of *Fernihough* v. *Leader* are not the same as in the case before me; nor is it necessary that they should be the same, in order that the principle on which the Court then proceeded should be the same as in this case, which appears to me to present a very plain equity on the part of the plaintiff, at least as against the defendant Billing. The case appears upon the bill as filed, that one of the debts due by the company was the debt due to Billing himself, for which he has thought proper to sue the plaintiff as a partner liable to him; and what is alleged in the bill is, that the other defendants have received monies belonging to the company, which are in the hands of the parties who have received them, applicable to the debts due from the company, and, therefore, to the debt due from the company to Billing, and for which Billing has sued the plaintiff. It is represented, that, in effect, the debt has

Cases in Equity.

Lewis v. *Billing.*

actually been paid; so that Billing is indemnified against any possible consideration of non-payment, and has assigned his debt, and allowed them to bring this action. Now, by all this statement Billing is bound. The bill, then, is filed, as I understand it, not for the purpose of carrying the partnership into execution, nor for dissolving it, nor for interfering, except to this extent, that these monies, which the other defendants and Billing have in their hands, may be declared applicable to the payment of the debts due from the partnership. That there is, then, a plain equity against Billing, no human being can doubt, because it is not equitable that the party whose debt is paid should lend his name, in order that, because a legal debt has not been paid, the defendants may harass the plaintiffs at law when they have money applicable to the payment of the debt. I know nothing about the facts further than appears upon the face of the bill. It appears to me that a consistent case is stated on the bill, and, as a demurrer has been put in for want of equity, the mere statement disposes of that. Then, it is said that the bill is multifarious. I do not see it: it states the contraction of the debt, and other circumstances, but it makes it binding upon the other defendants, the cestui que trusts of the action, to apply the monies to the payment of debt. What multifariousness is there in that? Now, Billing, by the nature of the proceeding, has implicated himself in the lines of duty to be pursued by the defendants. This is a voluntary act, and he has blended himself with it. I do not think that there is a want of parties. The bill is filed for the purpose of having a limited distribution of the partnership assets: it only asks that something be done for the benefit of all, in which the absent can participate as well as the present. I am not sure that this ought not to be treated as a speaking demurrer, because the framer of the demurrer has taken upon himself to say that the consequences will be intricate and prolix. Now, is not this a fact necessarily apparent upon the record, and does it not render the demurrer a speaking demurrer? I do not wish to insist upon this, because I think, that, upon the substance of the case, the demurrer ought to be overruled.—Demurrer overruled.

A bill was filed by a purchaser of scrip certificates in a company formed for making a railway in Spain, against the directors, charging misconduct on their part, and praying relief in

Harvey v. *Collett*, (10 *Jurist*, 603, *July 8th* and *9th*, 1846).]—This was a demurrer to a bill filed by Daniel Whittle Harvey, on behalf of himself and all other the shareholders in, or subscribers to, "The Royal North of Spain Railway Company," against William Richford Collett and twelve other defendants, the directors of that company. The bill in effect stated, that, before the month of October, 1844,

some of the defendants projected a joint-stock company, for the purpose of forming a railway between two places in Spain, and accordingly issued a prospectus of the company in the usual form: "North of Spain Railway Company (*a*). Capital, 750,000*l.*, in 25,000 shares

respect of such misconduct, and a general account. The bill stated, that the defendants represented that the shares would be transferable on delivery, and the liability limited, according to the law of Spain; that privileges had been obtained from the Spanish government on behalf of the company; that, before the shares were issued, the directors knew, that, on account of the engineering difficulties, the railway was impracticable: —*Held*, on demurrer, that this appeared on the bill to be a bubble company, and that the plaintiff was, therefore, not entitled to the detailed relief he had prayed for.

Semble, where a company is formed for the purpose of making a railway in a foreign country, and is constituted according to the laws of that country, those laws alone are applicable to the company.

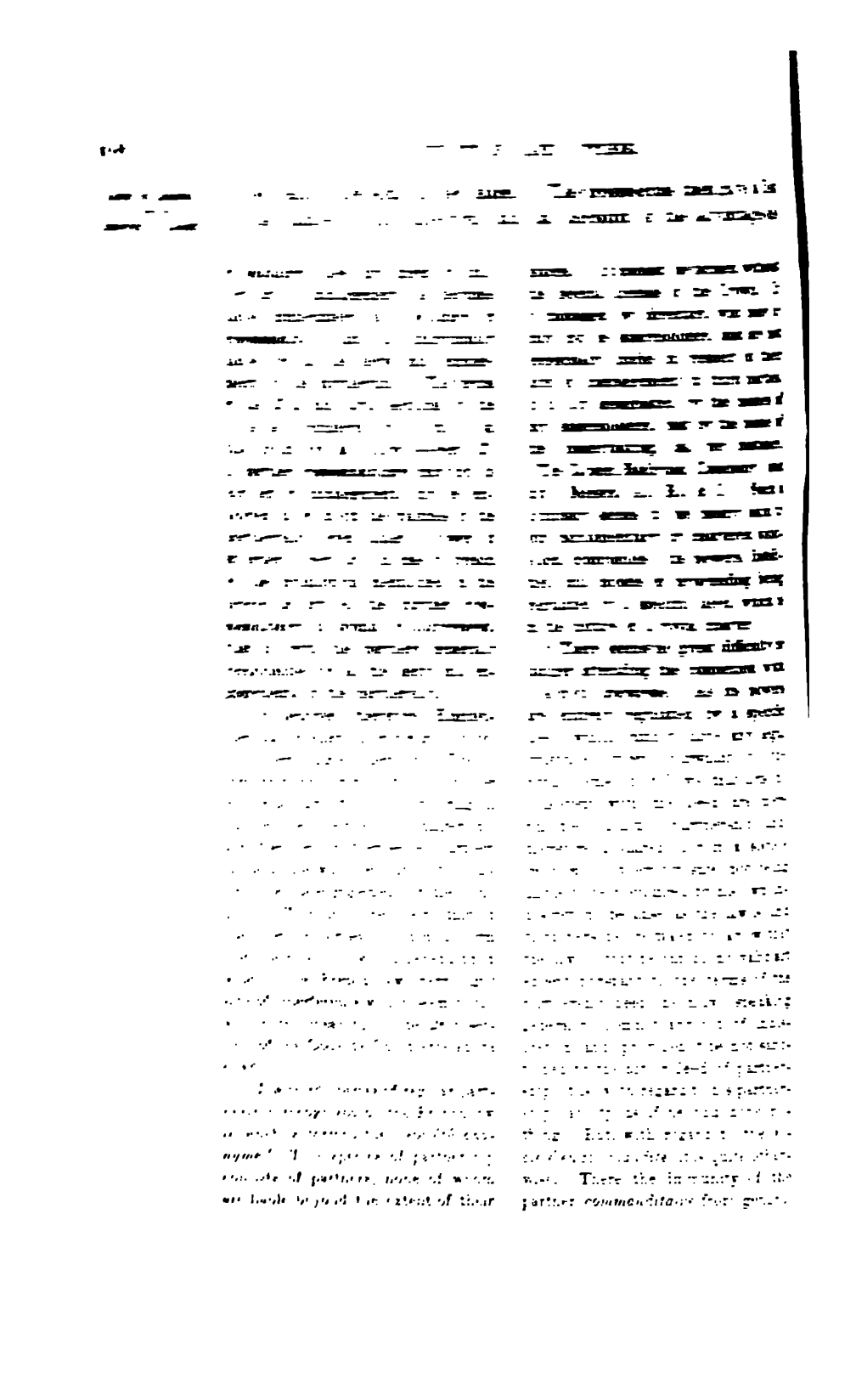
(*a*) As large transactions are now taking place in the sale and purchase of foreign railway shares, it becomes important to ascertain the liabilities which attach to a connexion with foreign companies. The subjoined account of the law of partnership in France, extracted from the pages of that useful publication "The Jurist," will be read with interest:—

"By the French code (Code de Commerce, liv. 1, tit. 3, s. 1) three regular species of partnership are recognised.

"The first, termed 'société en nom collectif,' is that which is formed between two or more persons, having for its object to trade under a style or firm. These partnerships are constituted by deed, which may be either a public deed, that is, a deed passed by public officers, having certain powers (see Code Civil, liv. 3, tit. 3, s. 1); or by private deed, which, to have full effect, must be executed pursuant to certain regulations contained in the Code Civil (sect. 1325). The partnership termed 'société en nom collectif' does not seem to differ from an ordinary English partnership. The persons whose names are contained in the partnership deed are all liable, to the extent of their respective estates, for all the contracts of the firm, even though such contract should be only signed by one of the partners, provided he has signed in the name of the firm.

"The second kind of partnership regularly recognised by the French law, is that which is termed 'société en commandite;' and this is the species of partnership which, we believe, is most frequently adopted in France for public undertakings.

"The peculiarity of the 'société en commandite' is this: it is a partnership composed of certain shareholders, who are individually liable for all the engagements of the partnership; and of certain others, who are in the nature of mere lenders of money to the partnership, and are only liable to the extent of the money they have lent or contracted to lend, that is, to the extent of their shares. The shareholders generally responsible, are termed *solidaires* or *commandités*: and the shareholders responsible only to the extent of their shares, are termed *commanditaires*. Such partnerships are carried on under a style, which must be composed of the names of some one or more of the shareholders generally responsible; and it would be wrong to introduce into the ostensible names of the firm, the name of a shareholder commanditaire; to do so, with his acquiescence, would, in fact, make him a shareholder *commandité*, and liable for all the debts of the partnership. The management of the concerns of a partnership en commandite, is vested in the shareholders *commanditès* exclusively; and this seems to be, in fact, the distinguishing attribute, in virtue of which the general liability arises; for, if a shareholder commanditaire, that is, not overtly and expressly put forward as a *commandité*



ects of this railway, and contained the following conditions :—
. deposit of 3*l.* per share, payable on allotment; the further in-
ents not to exceed 2*l.* 10*s.* per share, the first call being at an
al of three months, notice being given of each subsequent call.
ion payment of the deposit, each subscriber will receive a re-
to be exchanged for certificates of shares at the offices of the
any in London, of which due notice will be given by advertise-
Subscribers in Spain will receive a similar receipt, to be ex-
ed for certificates of shares at the company's offices, Oviedo and
d. 3. Notice of calls to be given by advertisement in the
on and Madrid Gazettes, and two or more daily London news-
s, and the Madrid and Oviedo journals; and if the call remain
d upon any share for twenty-one days after the same being
advertised, such share shall become absolutely forfeited, unless
ent cause be assigned, which shall be satisfactory to the direc-
4. When 10*l.* on each share shall have been paid, the share-
rs will be entitled on demand to receive certificate cedulas de

y, depends entirely upon his no act of management. What act of management, the Code, beautiful and much-admired city, wholly omits to describe; consequently, the only mode of ng absolute safety by the share- *commanditaire*, consists in ab- ig from doing any act whatever ch there is but the semblance rference in the management.

: may be observed, with regard English shareholder comman- : in a French société en com- te, that, if he were to do in ountry any act alleged to be an management, it seems doubt- the question of his liability had tried in any of our courts, to extent it would, in fact, be tried ling to the French law, or, at according to the French prin- of decision. It seems clear that urely legal question would be d according to the French law, les of which would be proved in the ordinary way, by the evidence of persons learned in the law of France. But the question, management or no management, would be a question of fact, and that, we apprehend, would be matter for the determination of the jury, if the case were such as to bring it into a court of law; or of the judge, if it came into equity. In effect, therefore, the decision would be half English and half French: French, so far as the rule of law is concerned; English, so far as the facts, and the rules of evidence applied to the proof of the facts, are concerned.

"The result of this inquiry is, that, as already observed, English shareholders *commanditaires* in French companies en commandite should be very cautious in their proceedings, and not forget, that, by very slight acts, they may convert themselves, from persons liable only to the extent of their shares, into partners in the strongest English sense of the word." 10 Jurist, 221.

credito, which, in accordance with the 280th article of the commercial code of Spain, are transferable to bearer. The interest of shareholders in the capital stock may, at their option, be represented by an inscription on the books of the company, shewing the amount contributed, pursuant to the 282nd article of the commercial code; but such registered share must be transferred by a medium in writing, and be inscribed on the books of the company. The holders of a registered share may obtain, on demand, a certificate cedula de credito in lieu; or the holder of a certificate may, in like manner, convert the same into a registered share. 5. Registered shareholders alone can attend and vote at the annual general and special meeting of the company, each holder of five shares being entitled to one vote, twenty shares to two votes, fifty shares to three votes, 100 shares, four votes, 150 shares and upwards, five votes. 6. The constitution of the company is that of an anonymous company, (compania anonima), in accordance with the 270th article of the commercial code. By the 278th article, the liability of the shareholders is limited to the amount of their respective shares. 7. The management of the company will be confided to a board of directors in London, the number being not less than seven nor more than eleven, who shall each hold in his own right not less than fifty shares, with power to appoint one or more local directors in Spain. The directors shall also have power to enter into such arrangements as they may deem necessary with the government and other bodies in Spain, in relation to the constitution, statutes, and other terms and conditions, for the establishment of the company. 8. The meetings of the company to be held half-yearly in London, in the months of January and July; the first to take place on the first Wednesday in July, 1845, or within thirty days after that date; twenty-one days' notice to be given of all meetings of the shareholders, by advertisements inserted in the London and Madrid Gazettes, and two or more daily newspapers." That the directors, in October, 1844, circulated another prospectus, which was nearly to the same effect as that already mentioned, but related to a smaller portion of the projected railway which was then proposed; that, shortly before the circulation of the second prospectus, the defendant Richard Keily proceeded to Spain as a member of the board of directors, for the purpose of proposing to the government of Spain certain measures with respect to the said railway; that Richard Keily, one of the defendants, as such director as aforesaid, obtained the consent of many Spanish noblemen and gentlemen to

become patrons of the said company, and obtained from the Spanish government the grant of divers valuable privileges and immunities, which were particularly referred to in the prospectus thereinafter mentioned, and induced her Majesty the Queen of Spain to take the said proposed line of railway under her especial protection, and that thereupon the said company was denominated "The Royal North of Spain Railway Company;" that certain decrees, grants, concessions, or royal orders were made to the said Richard Keily on behalf of the said Royal North of Spain Railway; that the said defendant Richard Keily returned to England in the first week of March, 1845, and that it was then fraudulently agreed and arranged between the said Richard Keily and the other defendants, that Richard Keily should be taken by the other defendants to have obtained such several decrees, grants, concessions, or royal orders in his own behalf and for his own benefit; and that 40,000*l.* should be paid to the said Richard Keily on behalf of the said Royal North of Spain Railway Company, and that the said Richard Keily should agree to sell and assign to the said company all the said decrees, grants, concessions, or royal orders; and that an agreement was accordingly made on the 14th March, 1845, between the said Richard Keily and the other directors, for payment of 40,000*l.* to the said Richard Keily; 20,000*l.* payable on the commencement of the first section of the railway, being from Aviles to Leon, and the remaining 20,000*l.* on the commencement of the line from Leon to Madrid. That, on the 14th March, 1845, the defendants caused to be printed and circulated a prospectus, as follows:—"Royal North of Spain Railway, from the Bay of Biscay to Madrid; first section from Aviles to Leon. Capital, 1,100,000*l.*, in 55,000 shares of 20*l.* each. Spanish reals vellon, 2000; francs, 500. Deposit, 2*l.* per share; reals, 200; francs, 50. Patrons," [then followed a long list of Spanish noblemen and gentlemen, directors in Madrid, &c., directors in London, &c.] There was then an account of the objects and advantages of the company, amongst which were, —"7. The formation of the company into an anonymous society, (compania anonima), by which the liability of the shareholders is limited to the amount of their respective shares. The line from Aviles to Mieres, thirty-five and a half miles in length, has been surveyed and reported upon by competent English engineers, and presents no engineering difficulties." "More than one-third of the shares has already been subscribed in Spain; a proof, independently of the powerful patronage which the project has already obtained, of

the high estimation in which it is held in that country. The affairs of the company will be conducted by a board of directors in London, assisted by an influential direction in Spain. The remuneration to the directors and fondateurs will be made in accordance with the plan usually adopted in continental railways:" and there was the usual form of application for shares. That the plaintiff applied to the said directors for an allotment of shares in the said company, in the form prescribed by the said prospectus of the 14th March, 1845, but no shares were allotted to the plaintiff; that the price of the said shares, upon which a deposit of 2*l.* per share had been paid, advanced to 5*l.* and upwards per share; that the said defendants, the directors of the said company, anticipating that the said shares would sell at a considerable premium, allotted to each of the said defendants, the said directors, a very large number of such shares, the greater part of which the said defendants sold immediately the price of the said shares had risen to a considerable premium, and thereby, and otherwise, by means of their situation as directors of the said company, the said defendants made very large profits upon the said shares reserved for and allotted to the said defendants; that the shares of the said capital of the said company are represented or evidenced by certificates issued by the said defendants as such directors as aforesaid, and signed by two of the said directors of the said company on behalf of the said company, and that such certificates, and the said shares therein respectively mentioned, are transferable by the delivery of the said certificates; that the plaintiff, having been influenced by the statements and representations of the said prospectus of 14th March, 1845, purchased 100 shares in the capital stock of the said company at the price of 2*l.* 15*s.* per share, and received transferable certificates for such shares which had been issued by the said defendants as such directors as aforesaid; that the plaintiff was then entitled, under and by virtue of the said certificates, to 100 shares in the capital of the said company. That, by an indenture, dated 20th June, 1845, in consideration of 10,000*l.* paid on 5000 shares in the said company, upon which a deposit of 2*l.* per share was considered as paid, and of 10,000*l.* paid in cash, and with a view of facilitating the completion of the undertaking, the said Richard Keily relinquished his claim to the further sum of 20,000*l.* agreed to be paid to him. That the defendants had, some time before the 20th June, 1845, been fully informed, that, from the nature of the country between Aviles and Leon, and by reason of the engineering difficulties which existed, it was impossible to form the

said intended railway, yet they concealed the true and real state of the said company from the shareholders until the 13th October, 1845, when they convened a meeting of the shareholders, and there made a report, to the effect, that, the first section of the railway being from Aviles to Leon, the directors took prompt and efficient measures to ascertain the practicability of fulfilling the conditions of the concession made to the company; that they sent from England to the Asturias a numerous staff of engineers, who had at great cost examined the entire mountain-ranges of the first portion of the line. And the report further stated, that, from the sections of the proposed railway, and the report of their engineers, it would be seen that the difficulties in the Asturias were of so insurmountable a character as to deter the directors from proceeding with that portion of the concession; and the directors proposed to make a return to the shareholders, and made other propositions. That at this meeting was produced and presented a printed document, entitled "Report of the Engineers to the Directors of the Royal North of Spain Railway Company," and purporting to be the report of Messrs. Rendel & Beardmore, dated 8th September, 1845, and also the report of George Stephenson, Esq., bearing no date; and that from the said report it appeared, as the fact was, that the said railway was altogether impracticable, and that the statements and representations as to the nature of the country, the amount of traffic, and the absence of engineering difficulties, and the other circumstances favourable to the said project contained in the said prospectus of 14th March, 1845, were altogether, for the most part, untrue. That the defendants had received, and had in their hands, divers large sums of money in respect of deposits paid by shareholders and subscribers upon their shares in the said company, and by various other means. The bill then charged, that the payment to the said Richard Keily of 10,000*l.* in cash, and the allotment and delivery to him of 5000 shares, was a breach of trust towards the shareholders. That, on the 14th March, 1845, all the defendants had, in fact, well known that the engineering difficulties of the Asturias were insurmountable, and such as rendered the formation of such a line of railway as proposed in and by the said prospectus totally impracticable; and that the same was totally impracticable. That the local traffic alone of the said intended railway would not yield an ample or any profitable return to the capital invested in the said undertaking. That the statements and representations made by the defendants (the di-

rectors) in the said prospectus of the 14th March, 1845, of the advantages to be expected from the said railway company, were put forth by them without having made proper or any inquiries into the truth and accuracy of such statements and representations; and that different statements in the said prospectus were untrue. That the holder of the said certificates of shares of the said company was entitled, as such holder, to such shares. That all the shareholders of the said company have a common interest in having the property, monies, and effects of the said partnership duly got in, and properly applied to the purposes of the said partnership, and in the relief thereby prayed. And the bill prayed, that the said agreement with Richard Keily, of 14th March, 1845, may be declared to be fraudulent and void, and that the defendants, except Richard Keily, and each of them, may be decreed to be personally liable to pay and make good, as part of the property, monies, and effects of the said company, the said sum of 10,000*l.*, paid to the said Richard Keily, and such a sum as the amount for which the said 5000 shares in the said company, so as aforesaid allotted and delivered by the said defendants to the said Richard Keily, might have been sold at any time between the 14th March, 1845, and the 13th December, 1845, with interest. And the bill further prayed accounts of the monies and shares received by the defendants, and prayed, in effect, a general account of the affairs of the company. To this bill the defendants demurred generally for want of equity, and because all and every the other holders of shares were necessary parties, and because the original holder or holders of the shares purchased by the plaintiff was or were a necessary party or necessary parties.

Sir *L. Shadwell*, V. C. of England.—It seems to me that the case is reduced to this very short point, whether the thing proposed by the directors was not, on the 14th March, 1845, within their knowledge, a matter wholly impracticable; and that time is material, because the plaintiff states in his bill, that he, having been influenced by the statements and representations of the prospectus of the 14th March, 1845, purchased 100 shares, so that such right as he might have had to interfere in the affairs of the company came to him after the 14th March, 1845. Then the charge in the bill is, that, on the 14th March, 1845, all the directors well knew that the engineering difficulties of the Asturias were insurmountable, and such as to render the formation of such a line of railway as proposed in and by the said prospectus totally impracticable; and the plaintiff charges that the same was totally impracticable: and there is a similar charge with respect to

of impracticability in a preceding part of the bill; "and that
said report it appears, as the fact is, that the said intended
is altogether impracticable." And then it charges, that the
its and representations, and so on, are for the most part un-
that there is a most positive allegation that the thing is not
practicable, but was known by the directors before the plain-
me a purchaser to be impracticable. Now, I do admit that
a great deal of allegation incidentally as to the law of Spain,
here is a statement, for instance, that, by a particular article
panish code of laws, shares of this nature may become trans-
and that, by another article of Spanish law, in what is called
ymous company, such as this is said to be in the view of the
Spain, a limited responsibility is only sustained by share-
but I do not find any allegation which expressly avers what
of Spain is; and though it appears that there have been
nd concessions made by the royal authority of the govern-
Spain, and the Queen of Spain has condescended to be the
this undertaking, and a great number of dukes and counts
ome the patrons of it, yet I do not find there is any allega-
the projection of a scheme known to be impracticable is a
hat would be considered by the law of Spain other than
t would be considered by the law of England; and it rather
ear to me, that, upon the allegations in this bill, I must take
ie directors, at the time when they issued the prospectus of
March, 1845, upon the confidence in which the plaintiff pur-
is shares, knew that the thing was totally impracticable:
ie averment upon the bill. Then, if the plaintiff so states
he really states that these defendants were projecting a
fraud,—a mere bubble,—a mere scheme to cheat; and it
ear to me, that, if he states his case in that way, I am not at
give him the detailed relief which he asks by the bill; and
plaintiff, having aimed substantially at the relief which
sk, I am not at liberty now to say that all the relief he has
d the whole of his prayer, is to go for nothing, and that this
be considered merely as a bill for the purpose of recovering
nt of what he may have paid, or the original value of the
om the defendants; and it seems to me, therefore, that this
must hold on account of that general ground, which there-
es it unnecessary to enter at all into the various other
that have been mooted at the bar. If, indeed, the thing

had not appeared on the face of it to have been a fraud, in the knowledge of the directors at the time when they issued the prospectuses, which was before the plaintiff's purchase, why then I think that the principle of the case of *Hichens* v. *Congreve* (4 Russ. 562) would apply. And it appears to me, upon the consideration of the case, that, for the purpose of overwhelming the directors with charges of fraud, the plaintiff has gone rather too far to enable me to give him any relief at all. And it also appears to me an extraordinary thing, that any man, especially a person so well known in this country as this gentleman is, should ever have purchased any shares in such a scheme as this. I am not at liberty to conjecture what the motive was for purchasing the shares, but I must take it he was influenced by the prospectus of the 14th March, and, therefore, he purchased from those who issued that which they knew to be totally false. Therefore I think, upon this bill, as it is constituted, I cannot give any relief, and, consequently, the demurrer must be allowed.

A bill was filed by some shareholders in an abandoned railway scheme, on behalf of themselves and all other shareholders, against the provisional committee, in which it was alleged that the object of the company had failed through the misconduct of the defendants; and it insisted, that they were not entitled to pay out of the deposits the expenses incurred by them after the failure; and it was by the bill further stated, that, at a meeting of the shareholders, the defendants had, by improper means, obtained a majority of votes to sanction their proceeding with the scheme; and it was prayed that accounts should be taken, and a rateable distribution made of the surplus of the deposit-money. A demurrer to the bill, for want of parties and for want of equity, was overruled.

Apperley v. *Page*, (10 *Jurist*, 998, *Nov.* 17, 1846).]—The plaintiffs in this case were four of the shareholders in the Midland and Eastern Counties Railway Company, and they sued on behalf of themselves and all other persons being shareholders, except the defendants. The defendants were the provisional committee of management of the company. The bill set forth the scheme for making a railway, with a capital of 1,500,000*l.*, in 60,000 shares of 25*l.* each, and the issue of a prospectus for the same. That the committee received applications for more than the whole number of shares, and might have allotted all, and raised the full capital. That they represented that all the shares were allotted, and that their deposits were paid on that faith, and that they executed the parliamentary contract, believing that a proper allotment of shares had been made to the full amount of the capital. That the defendants allotted only 35,000, which was insufficient to prosecute the undertaking, and of these 17,840 were not accepted; but on the remaining 11,160, deposits, amounting to 47,670*l.*, were paid into the bankers. That the plaintiffs had obtained a copy of the parliamentary contract, which contained a power to confine the application to any portion of the main line, to vary the termini, to make junctions, to divert to Evesham; to fix the capital, and increase or diminish it; to reduce the number and amount of shares, whether the whole number should be subscribed for or not; to incur expenses, and to pay the same if the application should be unsuc-

cessful. That the defendants knew, that, at the date of the parliamentary contract, viz. on the 29th October, 1845, they had failed to raise the necessary capital, and that it was out of their power to carry into effect the objects of the company,—in short, that such objects were frustrated and become impracticable; and that, therefore, they ought to have stopped the undertaking. That they nevertheless proceeded, and applied to Parliament for part of the line, the bill for which, after passing the House of Commons, was rejected by the House of Lords, and was finally abandoned. That 39,000*l.* was paid into court, pursuant to the standing orders, which defendants intend to apply in payment of debts and expenses incurred since 29th October, 1845. That the bill was only introduced for thirty-eight miles of the line out of 118 miles, and was rejected for want of evidence of traffic. That the application to Parliament for the thirty-eight miles' line was not authorised by the prospectus, and was a fraud on the plaintiffs and other shareholders; and that the defendants ought not to be allowed any expenses of it. That the plaintiffs executed the parliamentary contract on the faith that all the shares were allotted and capital raised. That the defendants well knew that they could not raise the capital; that the original capital for the short line was 800,000*l.*, afterwards reduced to 600,000*l.*, but which could not be raised, only 454,000*l.* being subscribed for, in 18,160 shares, wholly insufficient for the purpose. That the requisitions of the parliamentary contract were (inter alia) the name, description, and abode of shareholders; and it contained those particulars as to all the plaintiffs and the other shareholders on whose behalf they sued. That the defendants caused and procured the parliamentary contract to be subscribed, by themselves and others, to the extent of 3515 shares, equal to 77,875*l.*, to comply with the standing orders, of which 2550 were subscribed for by the defendants, and the remaining 965 were nominally subscribed for by various persons at their instance, whose names were unknown to the plaintiffs; and that no deposits were paid on the 3515 shares, and no scrip issued on them. The bill also set forth, that, on the 22nd May, 1846, a meeting of shareholders was convened and held, at which the plaintiffs, and the others on whose behalf they sued, voted against proceeding with the line, but that the defendants, by means of scrip certificates, which they had purchased, or caused to be held by persons under their influence, and by various undue means, procured a majority of votes in favour of proceeding, and thus procured a resolution to be passed for that purpose; that

Cases in Equity.

Apperley v. Page.

the defendant, the chairman of the committee, made a return, under the Registration Act, of shares to the amount of 18,160, as issued; that the defendants proceeded with the bill after they knew that it had become frustrated, and incapable of being carried into effect; that the defendants are guilty of a breach of trust in making the application to Parliament, and ought not to be allowed to pay out of the deposit-money any expenses incurred since the undertaking failed, and ought themselves to repay all the expenses already paid; that a rateable distribution of the expenses properly incurred ought to be made among the shareholders in such proportion as the number of shares held by them bears to 60,000, and that the residue ought to be paid to the plaintiffs and all others on whose behalf they sued; that the number of shareholders was so great, and their rights and liabilities so subject to fluctuation by death and otherwise, that it was impossible, without the greatest inconvenience, to make them parties, and to do so would render it impossible to bring the suit to a hearing; that the interests of the said shareholders, except the defendants, were identical with those of the plaintiffs, and none of the shareholders (except the defendants) had interests adverse to, or differing from, those of the plaintiffs, &c., and all the said shareholders (other than the defendants) were fully represented by the plaintiffs, and had a common interest in obtaining the relief by the bill prayed. The bill prayed, that a declaration might be made that the object of the company failed through the misconduct of the defendants; that they were not justified in proceeding after such failure, and not entitled to pay out of the funds of the company any expenses incurred after such failure. It also prayed an account of defendants' receipt and application of monies, and an order that they should repay all monies improperly paid; an account of all monies properly paid; a declaration that the plaintiffs were only liable for such proportion of the same as their shares bear to 60,000, the original intended number of shares in the larger undertaking, and an order accordingly; and for payment of the surplus to the plaintiffs and others on whose behalf they sued; an account of the funds in the defendants' hands; an application of them in payment of debts, &c., and the surplus in aid of the objects of the suit; for a receiver, and an injunction against the payment out of court of 39,000*l.*, in the Bank in the matter of this railway. The defendants demurred for want of equity, that the plaintiffs had no title to sue on behalf of themselves and all other persons being shareholders in the company; and for want of parties,

for that the persons who composed the majority of votes at the meeting of the 22nd May, or any persons representing them, or any part of them, were not parties to the suit.

His Honor said his present impression was, that the demurrer must be overruled; but he would look through the bill before he gave his final opinion.

Nov. 28.—The following written judgment was this day handed out to the parties:—Since the cause was argued on behalf of the defendants, I have read the brief of the bill furnished to me, and a copy of the demurrer. Having considered them, I continue to be of opinion that the bill states a case for equitable relief, and that it contains allegations and charges, which, upon principle, and on the preponderance, at least, of authority, are sufficient to sustain it against a demurrer for want of parties. I consider myself bound to overrule the demurrer. I think that it should be overruled in the ordinary way, but that the defendants should have six weeks' time to answer. If the plaintiffs object to the defendants having that time, I will hear counsel upon the question.

How far a subscription contract authorised provisional directors to amalgamate with another company.

Injunction issued to restrain provisional directors from withdrawing parliamentary deposits.

Gilbert v. *Cooper*, (10 *Jurist*, 580, *July* 4, 1846).]—This was a bill by Henry Gilbert, on behalf of himself and all other the shareholders in a certain projected company, called "The South and Midlands Junction Railway Company," except such of the said shareholders as are defendants, against the directors of said company and other persons. It stated, that, in the summer of 1845, a project was formed for making a railway from Bicester, in the county of Oxford, to Salisbury, in the county of Wilts. That the promoters thereof issued a prospectus, intitled as follows:—"The South and Midlands Junction, and Bicester, Swindon, Marlborough, and Salisbury Railway. Capital, 1,280,000*l.*, in 64,000 shares of 20*l.* each. Deposit, 2*l.* 2*s.* 6*d.* per share. Provisionally registered according to 7 & 8 Vict. c. 110." That it then described the intended line, originating at Bicester, and passing through the various places therein mentioned, amongst other places, Devizes, in Wiltshire, and terminating at Poole, in Dorsetshire. That plaintiff resided at Devizes aforesaid, and that he and many others residing in the vicinity of the proposed line did, on the faith of such prospectus, apply for shares therein. That eighty shares were allotted to plaintiff, upon which he paid the deposit, executed the parliamentary contract, dated the 24th September, 1845, and made between the shareholders of the first part

and trustees for enforcing the covenants of the second part, by which the shareholders covenanted that they had respectively subscribed the several amounts set opposite to their names, for the purpose of making and establishing a railway, to be called "'The South and Midlands Junction, and Bicester, Swindon, Marlborough, Devizes, and Salisbury Railway, with branches to Poole and Southampton,' or by such other name or names as may at any time or times be adopted by the provisional committee or directors for the time being of the said undertaking, from some point or points, with a certain projected railway, called 'The Oxford and Cambridge Railway,' at or near Bicester, in the county of Oxford, to some point or points at or near Salisbury, in the county of Wilts, by such course, route, or line, and through such parishes, townships, and places, as shall be from time to time settled and approved of by the said provisional committee of directors for the time being, and with such branch or branches, or extension or extensions from the said intended railway to Poole, in the county of Dorset, and Southampton, in the county of Southampton, and any other towns or places whatsoever, or to any railways, canals, or works, by such course, route, or line, or respective courses, routes, or lines, and through such townships, parishes, and places, and also with such roads, stations, warehouses, wharves, buildings, works and conveniencies leading or attached to, or connected with the said intended railway to any such branch or branches, or extension or extensions as aforesaid, as shall from time to time be settled and approved of by the said provisional committee or directors for the time being, the same respectively to be made, constructed, established, and conducted in such manner as shall be provided by an act or acts of Parliament to be applied for in the next session of Parliament, or, in case such act or acts shall not be applied for, or if applied for shall not be obtained in the next session, then by an act or acts of Parliament to be applied for and obtained in some subsequent session or sessions of Parliament, in which act or acts provisions are intended to be introduced, constituting the subscribers to the said undertaking, or the proprietors of shares therein, a body corporate," &c. "And further, that the provisional committee or directors for the time being of the said undertaking shall have full power and authority to fix upon, and from time to time to alter and vary, the points or places at which the said intended railway or any part thereof shall commence and terminate, and the intermediate course, route, or line thereof; and also from time to time to determine

what branch or branches, or extension or extensions, shall be made therefrom, and what roads, stations, warehouses, wharves, buildings, works, and conveniences shall be made or constructed; and to fix upon, and from time to time to alter and vary, the points or places at which any such branch or branches, or extension or extensions, or any part or parts thereof respectively, shall commence and terminate, and the intermediate course, route, or line, or respective courses or lines thereof, and also the extent and extension of such road, stations, warehouses, wharves, buildings, works, and conveniences as aforesaid; and also to make and (if necessary) renew, or cause to be made and renewed respectively, such applications to Parliament for all or any of the purposes aforesaid, and to conduct such applications, and all or any proceedings which they shall deem requisite or expedient for obtaining any such act or acts as aforesaid, in such manner as they in their discretion shall think proper, with full power, at their discretion, to confine the application or applications to Parliament, in the next or any future session or sessions, to any portion or portions of the said intended main railway, and either to omit or not to omit all or any of such branches and extensions as aforesaid, and to defer the application for the remainder of such main railway, or any part or parts thereof, and for all or any of such branches or extensions, to any future session or sessions; and, lastly, that in the event of no such act or acts being passed into a law, the said parties hereto of the first part respectively, and their respective heirs, executors, administrators, or assigns, shall and will pay, allow, and discharge all the expenses which shall have been incurred, whether previously to or after the execution of these presents, in or about, or with the view to the establishment or promotion of, the said undertaking, whether in or about the making, obtaining, or completing of any surveys or estimates for the said contemplated works, or any of them, or on account of any solicitor's charges, counsel's fees, travelling expenses, or the costs of preparing, applying for, soliciting, or promoting any such act or acts as aforesaid, or on any other account whatsoever incidental or preparatory to the said proposed undertaking, or to the promotion or establishment thereof, all such expenses to be computed and assessed rateably upon the amount or sum or sums of money respectively subscribed by each and every of the said several parties to these presents." The subscription contract bore date the same 24th September, and after recognising the parties therein named (who are defendants hereto) as the provisional committee or directors, it declared

the following, amongst others, to be the rules and regulations for the management and conduct of the said undertaking until an act or acts of Parliament should be obtained for that purpose :—

"1. That the said provisional committee of management or directors, or any board or meeting thereof constituted according to the provisions herein contained, shall have ample power to carry all or any part or parts of the undertaking, as described in the said parliamentary contract, into effect, and for that purpose to cause such surveys and estimates, and also to make such contracts and arrangements with railway and canal proprietors, landowners, and other persons, and generally to adopt all such measures whatsoever, as any such board or meeting of the provisional committee or directors as aforesaid, or any committee or committees of management, to be constituted or appointed in manner hereinafter mentioned, may, in their judgment, think necessary or expedient, or may be advised to adopt; and particularly to apply for and seek to obtain, as early as may be, an act or acts of Parliament for the establishment and promotion of the said undertaking, with such arrangements and provisions as they may think expedient.

"2. The majority of members at any board or meeting to bind the rest.

"3. The provisional committee to have power to add to their number, &c.

"4. The provisional committee to have power to appoint, suspend, or remove bankers, solicitors, engineers, &c., and to pay salaries, &c.

"5. That the said provisional committee of management or directors shall have full power to apply all or any part of the monies which shall have been paid by way of deposit, as hereinafter mentioned, in payment of all or any such salaries or recompenses as aforesaid, and in making such deposits as may be necessary for the purpose of complying with the standing orders of Parliament, in such manner as they may think proper, and in payment of the costs and expenses incurred, or to be incurred, in or about the obtaining of any such surveys or estimates as aforesaid, or with reference to the applying for and obtaining, or endeavouring to obtain, an act or acts of Parliament as aforesaid, and all other costs, charges, and expenses incident to the said undertaking, or which have been or may be incurred in respect or on account thereof or relating thereto, and generally in such manner as the said provisional committee or directors shall think

most conducive to the advantageous establishment, and promotion and advancement, of the said undertaking, and in remunerating themselves respectively for their attendance and trouble.

"6. That the said provisional committee of management or directors shall have full power to make all such contracts and arrangements with railway and canal proprietors, landowners, and other persons, as they shall think proper, concerning or relating to the said undertaking.

"7. That the provisional committee of management or directors shall have full power from time to time to make and establish all such bye-laws as they may think necessary or expedient."

The bill then stated, that, before the 30th November, 1845, it became known to said directors that it would be impossible to deposit plans on that day, and that, consequently, they could not apply for their act of incorporation during the then ensuing session. That up to that time the expenses incurred were very inconsiderable, and there was then in the hands of the said directors upwards of 90,000*l.*, derived from paid-up deposits. That the directors did not take any steps to obtain a knowledge of the depositors' wishes with respect to the disposition of the said deposits. That no communication was made to plaintiff until the 21st January, 1846, when he received a letter, signed by the secretary of said company, announcing the amalgamation of said company with the Manchester and Southampton Railway Company, and containing the following passage:—"The directors may add, that, as early as is compatible with the interest of the body of proprietors, the precise arrangement will be submitted to them, and such shareholders (if any) as then dissent will have the opportunity of receiving back their deposits, less the expenses. Henceforth the affairs of the South and Midlands Company will be managed by a joint committee, who will take into their consideration at the earliest moment the possibility of promoting the line of the company between Bicester and Swindon." That the Manchester and Southampton Railway Company was intended to pass through a wholly different line of country, and was in no respects similar in its extent, course, or objects to the said first-mentioned projected line. That plaintiff would not, and he believed that the great bulk of the shareholders in said first-mentioned projected railway company would not, have consented to such amalgamation. That, on the 19th May, 1846, plaintiff received another letter, signed by the secretary of said first-mentioned company, announcing a meeting intended to be held

on the 23rd instant, to take into consideration the propriety of obtaining a bill for making a railway from Poole to join the Manchester and Southampton Railway, canvassing plaintiff for his assent to that bill, entering also fully into the reasons for the aforesaid amalgamation, and stating, that, by the Manchester and Southampton line, two-thirds of the scheme proposed by the Bicester and South Midlands Railway would be carried out. The bill stated, that the Manchester and Poole Company was a separate company from said Manchester and Southampton Company, and that said Manchester and Poole Company did not in any way correspond with the said projected South and Midlands Junction Railway. That plaintiff attended such meeting, at which defendant Cooper presided, and it was then announced by him, and admitted by the other directors, that they had entered into an arrangement with the Manchester and Southampton Railway Company, to the following effect, namely, that the shareholders in the said South and Midlands Junction Company, including plaintiff, should be made shareholders to a large extent in the Manchester and Poole Company, which last-mentioned company should, if successful, merge in the Manchester and Southampton Company; in which case the shareholders in the South and Midlands Junction Railway Company would become shareholders in the company to arise from the union of the Manchester and Poole and Manchester and Southampton Companies, to the extent of 300,000*l.* That it was also stated at such meeting, and admitted by the directors, that, with a view to the benefit of said Manchester and Southampton and Manchester and Poole Companies, especially the latter, and in order to enable the latter company to apply to Parliament for an act of incorporation, they had subscribed and paid out of the monies of the South and Midlands Junction shareholders the whole parliamentary deposit on behalf of said Manchester and Poole Company, to the amount of 55,000*l.*, without any authority from the depositors. That plaintiff and the great majority of shareholders present protested against such proceedings, and declined to have any connexion with the proposed Manchester and Poole Company; and, upon plaintiff threatening to institute proceedings in Chancery, the directors of said South and Midlands Railway Company undertook to procure the withdrawal of the bill for incorporating the Manchester and Poole Company, which they accordingly did. That the said sum of 55,000*l.* is still standing in the books of the Bank of England, in the names of defendants Cooper, Fisher, Shaw, Walkin-

shaw, and Tootal, (the two latter of whom were directors of the Ludgershall and Poole line, but were not directors of the proposed South and Midlands Company), having been paid in, with the privity of the Accountant-General of the Court of Chancery, to the credit of said Manchester and Poole Railway Company. The bill then stated, that plaintiff had recently discovered that the directors of the said South and Midlands Junction Company threaten, and intend, out of the monies of said company now in their hands, together with said sum of 55,000*l.*, when the same should be paid to them out of court, to pay and discharge all the costs, charges, and expenses incurred in and about said Manchester and Poole Company, from the original projection thereof to the withdrawal of said bill, amounting to many thousand pounds; and that they have, in fact, entered into some contract with the Manchester and Southampton directors, or with the Manchester and Poole directors, or both of them, to do so. That, on the 13th June, 1846, the defendants Cooper, Walkinshaw, and Tootal presented a petition to the court, praying for payment out of court to them of said sum of 55,000*l.*; and the order was made as prayed on the 17th of that month. The bill prayed, that an account might be taken of all the deposits received by the defendants for the benefit of said company, and of their application thereof; and that it might be declared what part (if any) of the payments made by the defendants were properly made as between plaintiffs and defendants; and that they should be disallowed all payments improperly made by them, and should be declared personally liable to repay such sums, &c.; and that it might be declared that the defendants, the directors of the South and Midlands Junction Railway Company, have, by their various proceedings in the bill stated, been guilty of a gross breach of trust reposed in them by the shareholders in the same company; that they might be removed, and fit persons appointed in their place to wind up the concern and distribute the assets; that the defendants might be restrained from receiving or possessing themselves of said 55,000*l.* so deposited as aforesaid; and, in particular, that the defendants who obtained the order of the 17th June might be restrained from prosecuting that order, and that all the defendants might be restrained from intermeddling or dealing with the property or assets of said company, or any part thereof; that an account might be taken of all the debts and liabilities of said company, (if any), and payment made thereof, and that the residue might be distributed amongst the shareholders;

and that the defendants might be decreed personally to pay all the costs of this bill. Plaintiff now moved upon the following notice of motion, "that the said defendants James Watkinshaw, Lionel Howe Cooper, and Henry Tootal, may be restrained, by the order and injunction of this Court, from proceeding the order obtained by them on or about the 17th June last past, for payment out of court of the sum of £2,000, in the pleadings in this cause mentioned; and that the three last-named defendants, and also the said defendants Seth Russell Fisher and William Shaw may be restrained, by the like order and injunction, from obtaining, or endeavouring to obtain, any order, either alone or in conjunction with any other person or persons, or in any manner taking any proceedings to obtain payment to them, or any of them, of the said sum of £2,000, or such other sum as has been deposited as in the pleadings in this cause mentioned." The motion was made upon the affidavit of the plaintiff, which was an echo of the above statements in the bill. Against the motion was read the joint affidavit of G. N. Wright, the secretary to the South and Midlands Junction Railway Company, and W. B. James, the solicitor to said company, which, after setting forth said deed-poll of 24th September, 1845, and the indenture of the same date, stated to the following effect:—That the directors of said company entered into a contract with one W. M. Higgins (who was the engineer named upon the prospectus of said company) for the preparing the surveys and plans, &c. of the proposed line of railway, by which agreement he was bound to have the plans and sections, &c. complete before the 30th November, 1845, in order to deposit them in compliance with the standing orders. That Higgins failed in having the necessary sections and plans ready by the 30th November; and the consequence was, that it became impossible to apply to Parliament for an act during the present session. That an action at law has been commenced against Higgins in consequence of such breach of contract. That said proposed line was in favour with the public, and that there were several competing lines for which acts were about to be applied for to Parliament, which lines proposed to run in the same or nearly the same direction as the South and Midlands proposed line. That, amongst other circumstances, the Manchester and Southampton Company, whose shares were then at a premium, were about to apply to Parliament for an act to enable them to construct a line from Swindon in Gloucestershire to Swindon in the county of Wilts, by Marlborough

to Southampton, with a branch from Ludgershall to Poole, in Dorsetshire; and that such line constituted by far the greater portion of the scheme originally proposed by the South and Midlands Company. That the said Manchester and Southampton Company, shortly before the transactions with the South and Midlands Company, altered their scheme, and determined to apply for two separate acts of Parliament, the one for the line from Swindon in Gloucestershire to Southampton, and the other for a branch from Ludgershall to Poole. That it became necessary to have a fresh parliamentary contract for the proposed branch from Ludgershall to Poole. That it was agreed between the directors of said Manchester and Southampton Company and the directors of said South and Midlands Company, that the shareholders of the latter company should be entitled to 1500 shares in said Ludgershall and Poole Company; and that the sum of 55,000*l.*, then in the hands of the directors of said South and Midlands Company, should be paid into Court as an advance, and to enable the Ludgershall and Poole Company to comply with the Standing Orders with regard to deposits; and that, upon the faith of such guarantie, it was also agreed, that the sum of 8000*l.* should be advanced to said Manchester and Southampton Company on account of the expenses incurred in promoting and preparing the Ludgershall and Poole line, which sum was to form an item to the credit of the South and Midlands Company. That, at the meeting of shareholders, held on the 23rd of May last, the Ludgershall and Poole line was disapproved of by the shareholders in the South and Midlands Company; and it was accordingly agreed by the directors of the South and Midlands Company and the directors of the Manchester and Southampton Company, that the said agreement should be put an end to, and the 55,000*l.* paid out of Court for the purposes of the South and Midlands Company. That the petition referred to in plaintiff's bill was presented for the purpose of effecting such return. That the said advance of 8000*l.* is now claimed by the directors of said South and Midlands Company, and the right thereto is the subject of a reference to counsel between said two companies. That it is not intended, and since the withdrawal of said Manchester and Poole line it has never been intended, out of the sum of 55,000*l.*, or out of any other sum now in the hands of the directors of said South Midlands Company, to apply any part thereof in payment of the expenses of said Manchester and Poole Company. That the line proposed by the Manchester and Poole Company, taken in conjunction with the Manchester and Southampton Company, cor-

responded with by far the greater portion of the projected South and Midlands Railway; and that, except so far as the last-mentioned scheme extended from Swindon in Wilts to Bicester, the whole object of such scheme would have been substantially answered by said Manchester and Poole Railway, in conjunction with said Manchester and Southampton Railway; and that it was distinctly agreed between the two companies at the time of entering into said agreement, that the remainder of the South and Midlands scheme from Swindon to Bicester should, at a future period, be made the subject of consideration.

Sir *L. Shadwell*, V. C. of England.—The question in this case really is, whether, substantially, what the managers of the South and Midlands Company did was authorised by the subscription contract. I do not go through every word of it, because it has been so often discussed; but it is perfectly true, that these gentlemen, who were so named to manage, were authorised in general terms to carry all or any part or parts of the undertaking, as described in the parliamentary contract, into effect, and for that purpose to cause surveys to be made, and so on, preliminary matters, "and generally to adopt all such measures whatsoever as any such board or meeting of the said provisional committee or directors as aforesaid, or any committee or committees of management to be constituted or appointed in manner hereinafter mentioned, may, in their judgment, think necessary or expedient, or may be advised to adopt, and, particularly, to apply for, and seek to obtain, as early as may be, an act or acts of Parliament for the establishment and promotion of the same undertaking." Then, the second proviso directed that the majority of members at any board or meeting should bind the rest; and then it was directed that the provisional committee should have power from time to time to add to their number from the subscribers, and so on; and then there is a general power given to them to suspend and remove officers; and then, by the 6th clause, it was provided "that the provisional committee shall have full power to make all such contracts and arrangements with railway and canal proprietors, land-owners, and other persons, as they shall think proper, concerning or relating to the said undertaking;" then, that they shall have power to make bye-laws, (that is the 7th clause), and that they shall have power to invest such deposits as they may think fit in government or real securities. Now, it appears to me to be perfectly plain, on this subscribers' contract, that it never was the intention of the parties who gave author-

to this provisional committee, that they should have power to ke any such steps, as that, when taken, the original projectors themves of the South and Midlands Company should no longer have in eir own hands the dominion over the plan. In other words, it es appear to me that there was no authority given here to these ectors to surrender their powers to any persons, to take away the lividuality of the character which the South and Midlands scheme ginally had, and to make them, as they might have been made in the ogress of amalgamation, sanctioned by act of Parliament, altoher a distinct thing from what they originally contracted to be. ey were to be a set of persons supplying themselves the capital essary for the carrying into execution the proposed purpose; they re to have the dominion over their own funds, &c.; and it does pear to me, that, unless some express words can be found of larger port than any that I can see in this subscribers' agreement, the ntlemen who were intrusted with the provisional management had power to do what they projected to do. It is perfectly true, that, en an application is made to this Court for its interference in the nsit of large sums of money, in which several persons are interested, reat deal of inconvenience may be produced by the interference of Court; and I admit that there is great weight in Mr. *Terrell's* servations on that part of the case; but then it is to be considered, the other hand, whether, if gentlemen contract to form themselves o a society, to be governed by themselves, they are to be transred, by a sort of oriental despotism exercised by the provisional ectors, into a company,—a set of beings, I should rather say, of a ally different character. They contracted to be individuals sponeously formed to govern themselves and their own affairs. The eme which was aimed at by the directors was, I dare say, very dable. I am not speaking in any terms that can give the slightest nce to any human being; but, mistaking their powers, meaning act for the best, but, in my opinion, judging erroneously, they ceeded to destroy the original character, rights, and powers of the ginal projectors of the South and Midlands Company; and my nion is, that this Court ought not to allow such a thing; and I do myself conceive that the party has applied too late: as long as 55,000*l.* was in Court, there it was safe. When an application is de to have it paid out of Court, then is the time to apply, and n the bill was filed. It appears, that, in pursuance of the circular the 19th May, the meeting was held on the 23rd; and there was

ample protest, and a declaration, that this gentleman, who is a plaintiff now, would file a bill. [His Honor asked, at what time the money was actually paid in, and what was the day of the date of the application to have it out? It appeared, that the money was paid into Court in February last, and the application to have it paid out of Court was made on the 17th June.] I cannot but think, that, this meeting having taken place on the 23rd May, and the bill having been withdrawn, as it is sworn, on the 25th May, this bill was filed quite in time for the purpose of intercepting the transit of the money back again, apparently on the face of the order, into the hands of the gentlemen who were never authorised by the projectors of the South and Midlands Company to receive any part of their assets whatsoever. I dare say, it is all perfectly right, and it was understood in the way of honourable proceedings, that these two gentlemen, the foreigners, Messrs. Walkinshaw and Tootal, would put the money in the possession of Mr. Cooper and those two other gentlemen who were the three provisional directors of the South and Midlands Company who joined in paying in the money. I observe, by the terms of the act of Parliament, that the money can only be had out in a given form,—that the parties who paid it in, or a majority of them, may apply to have it out; and the direction is, that it shall be paid to the parties applying, or those whom they may appoint. With respect to the payment of the 8000*l.*, I take it as it stands, exactly on the joint affidavit of Messrs. James and Wright. There are two passages which relate to it; they first of all state, "It was also agreed that the sum of 8000*l.* should be advanced to the Manchester and Southampton Company, on account of the expenses incurred in promoting and preparing the Ludgershall and Poole, otherwise Manchester and Poole line, in which the said South and Midlands Company was about to acquire so large an interest, and which payment was to form an item to the credit of the South and Midlands Company, in the final adjustment of accounts between the two companies." Now, it appears to me that that agreement, simply as an agreement by trustees to pay their cestui que trusts' money, not for a definite demand, but so as to make it form an item of account, was not the proper mode of dealing with the money of the cestuis que trust. And there is this further thing to be observed, that this last passage is, as it appears to me, something different from what is subsequently stated: "That the said sum of 8000*l.* so advanced to said Manchester and Southampton Company for such plans, sections, and

expenses is claimed by the defendants as directors of the South and Midlands Company, but such claims to some extent resisted, and the rights and liabilities of the parties to the said sum of 8000*l.* has been made the subject of a reference to counsel." You will observe, that in the first instance it is stated, that it was agreed, that it should be advanced on account of the expenses incurred in promoting and preparing the Ludgershall and Poole, otherwise Manchester and Poole line; and now it says, that the sum of 8000*l.*, so advanced to the Manchester and Southampton Company for such plans, and sections, and expenses is claimed by the defendants; so that it is left, on this affidavit, rather vaguely stated in respect of what the payment actually was: but I cannot myself think that it was a right thing to advance a solid sum with a feeling that the whole was not due on the speculation, and that the amount which was really due was to be settled in a future account. That does not appear to me to be a very wise or prudent mode of proceeding. If, indeed, it was the result of the agreement, why then the making of the agreement is one of the very things complained of, because it becomes a question, as I said before, whether it was a thing authorised by the subscribers' contract. Mr. *Stuart* particularly noticed that section in the subscribers' contract which related to making agreements with railway companies and other proprietors. [*Stuart.*—Railway proprietors or any persons.] "All such contracts and arrangements with railway or canal proprietors, land-owners, or any other persons." Now, really I should have thought that would have applied to this case: if, for instance, the Manchester and Poole people had constructed a portion of the projected line, and they had power to sell, and were willing to sell, it would have been quite within the province of the 6th article of the subscribers' contract that the directors of the South and Midlands Company should have entered into a contract to purchase it; that I can understand: but it is quite a different thing where no line was completed, but, for the purpose of having some line completed not belonging to anybody, the directors of the South and Midlands Company make a contract, by means of which they actually disable their own company from acting by itself. Now, I cannot but think that some difficulty may arise in getting the money out of court if it be allowed to remain in the names of the five. The mode of getting the money out is particularly prescribed by the act of Parliament; and it strikes me, that, if there was to be merely a stop upon the execution of the order, there may, for aught I know, arise some such circumstances as would prevent the money from ever being got out, un-

less a new act of Parliament should be passed; if, for instance, three of the five should die. It appears to me, that, if the parties agree to it, the proper order will be this: not to grant an injunction, but to let the money be paid to the three, on their undertaking forthwith to pay it into court. I throw this out for the consideration of the parties; if they will not do that, I must grant the injunction simpliciter. [*Stuart.*—We cannot agree to that: we think it would be a breach of trust. We cannot agree to it.] *Vice-Chancellor.*—Then I must grant the injunction.—Motion granted. See the following case.

Same point as *Gilbert* v. *Cooper*, ante, 617.

Lewis v. *Cooper*, (10 *Jurist*, 602, *July* 24, 1846).]—The object of this motion was to dissolve an injunction, granted ex parte by the Vice-Chancellor of England, against the same parties, and in the same terms, as that granted in *Gilbert* v. *Cooper*, (reported ante, 617). The defendants in the last-mentioned case appealed to the Lord Chancellor, and, on the 11th of July instant, the motion appeared in his Lordship's paper; but the matter was ultimately compromised. The plaintiff in the preseut case, who was another shareholder in the South and Midlands Railway Company, having filed a bill precisely similar to, and with the same object as, that in *Gilbert* v. *Cooper*, obtained, (on 11th July), ex parte, an injunction restraining the three defendants, Cooper, Walkinshaw, and Tootal, from prosecuting the order, obtained by them on 13th June, for the payment out of court of the 55,000*l.*; and restraining these three, and also Fisher and Shaw, making up the five directors in whose names the money was standing, from obtaining any order, or taking any proceedings to obtain payment of the said sum. The defendants, in consequence of the decision in *Gilbert* v. *Cooper*, considered it useless to move before the Vice-Chancellor to dissolve this injunction, and therefore applied to the Lord Chancellor for leave to bring on the motion at once before his Lordship. Permission having been given accordingly, the case now came on for argument.

The arguments on both sides went to the same matters as were insisted on in *Gilbert* v. *Cooper*. In the course of the discussion, the Lord Chancellor directed particular attention to the fact, that, although it might be improper that the money should go into the hands of three parties, two of whom were not directors of the original company, yet the injunction also extended to the five, of whom there were three who were directors of the original company.

His Lordship, without going into the questions discussed at the bar, finally sustained the injunction, but expressly limited it to re-

straining the three from prosecuting the order, striking out the further portion of the injunction. His Lordship, also, considering that the terms of the injunction as originally granted, connected with what had taken place in *Gilbert* v. *Cooper*, were calculated to induce the defendants to suppose that the injunction had an ulterior object to that which would be effected by the injunction as now granted, gave no costs.

July 30.—A petition was presented, (and heard, by permission, before his Lordship), in the names of those three out of the five above-mentioned parties who were directors of the original company, praying for the payment to them of the fund in court. After some opposition from Mr. *Bethell*, on behalf of the plaintiff, upon the ground that the petitioners were not to be found at their described places of residence, and that the bill disclosed serious breaches of trust committed by the directors generally, Mr. *Rolt*, for the petitioners, having stated that they were willing that the money should be paid out to any three of the directors of the original company; and having named several who were willing to receive the fund, for the purpose of distributing it among the shareholders, it was finally arranged, that the order should be taken for the payment of the fund in court to such three of the directors of the South and Midlands Company as both parties might agree upon.

The *Lord Chancellor*, at the conclusion of the discussion, remarked, "The only allegation against the directors is, that, possibly, they went beyond their powers in their negotiations with another company. There is not the slightest imputation on their conduct and honour as individuals."

Injunction continued to restrain provisional directors from withdrawing a certain parliamentary deposit, but dissolved as to other portions of the deposit.

Goodman v. *De Beauvoir*, (10 *Jurist*, 938, *June* 3, 1846).]—The bill in this case was filed by Charles Goodman and several others, on behalf of themselves and all other the shareholders in the Warwick and Worcester Railway Company, except such of the shareholders as were defendants, and such other of the shareholders as concurred with the defendants. According to the statements contained in the bill, it appeared, that, in September, 1845, the defendants and others became registered as promoters of a railway, to be called "The Warwick and Worcester Railway," and issued a prospectus of it, stating that the capital of the company projected for forming the said railway was to be 700,000*l.*, in 35,000 shares of 20*l.* each, and the deposit per share was to be 2*l.* 2*s.* That the defendants were, previously to and

at the publication of the said prospectus, and still were, the managing directors of the London and Birmingham Extension Railway Company, and formed a design at the very formation of the said Warwick and Worcester Railway Company to constitute themselves the committee of management of the last-mentioned company: and the bill stated the schemes adopted for that design, and that the defendants had assumed and taken upon themselves the whole control and management of the said company. That the plaintiffs and the other defendants, and a number of other persons, did respectively apply for shares in the said company, and that the plaintiffs respectively received letters of allotment, and duly paid deposits of 2*l.* 2*s.* per share; and the plaintiffs and a great number of other persons executed the subscribers' agreement and parliamentary contract, and received certificates of shares. The subscribers' agreement, dated 6th October, appointed defendants the committee of management, and gave them very full powers, amongst which were power and authority to enter into any arrangement which they might think proper for the purchase or renting, or for the use, of any other railway, tramway, or canal; and also power for uniting, joining, consolidating, and amalgamating, wholly or partially, the said intended railway and undertaking with any other railway or undertaking, upon such terms and in all respects as the said committee of management should think proper; and out of the monies which had been or should be paid, or should thereafter come to the hands of the bankers of the said undertaking, either as deposits, or in pursuance of calls made or to be made by the general committee of management upon the subscribers, to make such deposits, if any, as might be necessary for the purpose of complying with the Standing Orders of Parliament. That the projected undertaking was favourably received; and that applications for shares, to the extent of 100,000 shares and upwards, were made by solvent and responsible persons to the defendants, whereby they had the power of allotting all the proposed shares in the said undertaking; yet the defendants, with a view to their own personal benefit, did not allot more than a limited number of shares, with the object of appropriating to themselves the option of taking up the said reserved shares if they should rise in value. That the plaintiffs had lately discovered that the defendants, as such managing directors, gave instructions from time to time to a broker to purchase a number of shares, and thus to create a market for the sale of the shares, so reserved as aforesaid, at a considerable

premium. That the defendants had, in compliance with the Standing Orders, deposited at the Bank of England the sum of 41,250*l.*, and proceeded to shew a compliance with the Standing Orders, but had been declared not to have complied with the said Orders. The bill also stated, that the defendants had acted improperly in several other matters. That, in direct violation of the powers granted to them by he said subscribers' agreement and parliamentary contract, they had entered into a written contract for the purchase of two canals. That the said defendants were induced to enter into the said contract solely with a view to their own private interests; and that, in the interval between the formation of the said Warwick and Worcester Railway Company and the date of the said contract, many of the said defendants had purchased shares in the said canals, and entered into the contract aforesaid solely with the view of enhancing the price of the said canal shares; and that some of the defendants had realised considerable sums by the sale of the said canal shares. The bill also stated, that the defendants had misapplied large sums of money out of the funds of the company. It charged, that the defendants threatened and intended, and had in fact already applied for and obtained, an order from this Court for payment unto them, or some of them, of the said sum of 41,250*l.* so deposited as aforesaid; and that the defendants threatened and intended to misapply the same, or some portion thereof, as in the bill mentioned. And the bill prayed, that an account of the affairs of the company might be taken, and that the defendants might be restrained from acting on the order so obtained as aforesaid, and from receiving or in any way possessing themselves of the sum of 41,250*l.* then standing in the name of the Accountant-General of the Court, to the credit of the said railway company. The plaintiffs filed an affidavit, echoing the statements in the bill, and thereupon, on the 26th May, 1846, obtained an injunction to restrain the defendants from acting on the order obtained by them for payment of the sum of 41,250*l.* so deposited as above mentioned, and from receiving or in any way possessing themselves of the said sum, until they should fully answer the plaintiffs' bill. The defendants now moved to dissolve the injunction; and a petition was at the same time presented for payment of the money out of court. In the affidavits filed in support of the motion were set forth the parliamentary contract and subscribers' agreement, bearing date 10th October, 1846, by which thirteen of the defendants were appointed the committee of management of the

Warwick and Worcester Railway Company (a): also the parliamentary contract and subscribers' agreement, dated 10th October, 1846, of the Rugby, Warwick, and Worcester Railway Company; also the parliamentary contract and subscribers' agreement, dated 10th October, 1846, by which fourteen of the defendants were appointed the committee of management of the London and Birmingham Extension Railway Company; also an indenture, bearing date the 1st January, 1846, in which covenants were mutually entered into by the respective managing committees, that the Warwick and Worcester Railway Company; and the Rugby, Warwick, and Worcester Railway Company should be amalgamated, and that the London and Birmingham Extension Company (the committee of which had no power to amalgamate) should act according to agreements therein contained; and the terms of the amalgamation were settled; also the Parliamentary contract and subscribers' agreement, dated October, 1845, of the Worcester, Warwick, and Rugby Railway Company; also an indenture, dated 28th January, 1846, by which the committees of the Worcester, Warwick, and Rugby Railway Company and the above-mentioned amalgamated company, covenanted that the two last-mentioned companies should be amalgamated on the terms therein mentioned; amongst which were, that the sum of 15,000*l.*, the balance in the hands of the Warwick and Worcester Railway Company, the sum of 27,000*l.*, the balance in the hands of the Rugby, Warwick, and Worcester Railway Company, and the sum of 27,000*l.*, the balance in the hands of the Worcester, Warwick, and Rugby Railway Company, should be brought and paid out, and should form the joint stock of the said thereby amalgamated companies. That the object of the said amalgamated company should be the making of a railway, to commence at or near to the town of Rugby, and to lead to the city of Worcester, either with or without a branch to Droitwich; and that the line, for the making and maintaining whereof application for an act of Parliament should be made, should be either of the three lines, or a line formed by a combination of parts of all or any of such lines as should appear most advantageous. And the affidavit further stated, that the above-mentioned sums were paid into the common fund, and amounted to 69,000*l.* That the committee of management of the amalgamated

(*a*) The subscribers' agreement as set out in the affidavit differs from that set out in the bill, but not materially.

company ultimately adopted the line of the Warwick and Worcester Railway Company, and determined to proceed to Parliament in the name of the said company, for the benefit of the said three companies; and that, out of the said 69,000*l.*, the directors of the amalgamated company paid into the Bank of England the sum of 41,250*l.*; and that the parties selected by the directors of the amalgamated company as those in whose names the said sum should be paid into court were the defendants, Sir J. E. De Beauvoir, William Shaw, Henry George Ward, (who was a director of the Worcester, Warwick, and Rugby Railway Company), and William Hughes Hughes and James Morrison, (who were two of the directors of the Rugby, Warwick, and Worcester Railway Company). In opposition to this, affidavits by the plaintiffs and others were filed, to the effect that the plaintiffs did not know, of their own knowledge, and had never heard of any such amalgamations as above mentioned having been entered into, or any other amalgamation of the said companies, except that they had heard that such amalgamation had been contemplated; and that, except as appeared by the said affidavits, they had, up to the present time, no knowledge that the whole 41,250*l.* was not the property of the said Warwick and Worcester Railway Company. The defendants, on their part, filed affidavits, to the effect that the circumstances of the amalgamations were notorious in the town of Northampton, where several of the plaintiffs lived.

Sir *L. Shadwell*, V. C. of England, in delivering judgment, observed —That this injunction had been granted against the defendants, as directors of the Warwick and Worcester Railway Company. But it appeared that there had been other undertakings projected—the Worcester, Warwick, and Rugby Railway; the Rugby, Warwick, and Worcester Railway; and also the London and Birmingham Extension. These schemes were amalgamated; and the result was, that, for the purpose of obtaining the act of Parliament, 15,000*l.* was raised by the Warwick and Worcester; 27,000*l.* by the Worcester, Warwick, and Rugby; and 27,000*l.* by the Rugby, Warwick, and Worcester; and 41,250*l.* was paid into court out of the collective sum so raised. His Honor did not think that any answer had been given to the acts of misconduct charged against the defendants; and the only attempt made to put an end to the injunction was by means of the statements in the affidavits as to the amalgamation. But there was one thing not alluded to in the argument, which struck His Honor as important. By stat. 1 & 2 Vict. c. 117, s. 4, it was directed, that,

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Goodman v. De Beauvoir.

in certain cases, the Court "shall" order the money to be paid out. These words were positive; yet he thought, that, as the Court had inherent control over persons who were in the position of trustees, it was not imperative upon the Court to order the money to be paid out, without seeing that it really ought to be done, and ascertaining whether the circumstances justified the Court in making the order. His Honor did not consider that any objection arose to the plaintiffs' case on account of the amalgamations not being mentioned in the bill; for there did not appear to have been sufficient to fix the plaintiffs with knowledge of the circumstances; and the plaintiffs' case, therefore, was not impugned. But His Honor would only continue the injunction with respect to that portion of the fund which might fairly be attributable to the Warwick and Worcester Railway: as to the rest, he did not see that any case was made out against the directors of the other companies, and he should dissolve the injunction as regarded the remainder of the money, and the defendants might prosecute their claim to it as if there had been no suit against them. The order must be, that 8967*l.* 7*s.* 6*d.*, which bears the same proportion to 41,250*l.* as 15,000*l.* does to 69,000*l.*, must remain in Court. Continue the injunction as to 8967*l.* 7*s.* 6*d.*: dissolve it as to 32,282*l.* 12*s.* 6*d.*, which is to be paid to the petitioners, Ward, Hughes, and Morrison.

Agreement between the solicitor and projector of a railway company, provisionally registered, and the provisional committee, that the latter shall not be personally liable to the solicitor for his costs and disbursements on account of the undertaking, but that the solicitor shall be paid out of the fund to arise from deposits, is not necessarily an illegal contract; and a bill filed for specific performance of the contract against the provisional committee and provisional directors, alleging that the defendants have paid up their calls, and all resist the demand, is not demurrable,

Parsons v. *Spooner*, (10 *Jurist*, 423; 15 *Law J., Ch.* 155, *Jan.* 17, 18, *and* 26, 1846).]—The bill in this case stated, that, in August, 1845, the plaintiff, Parsons, at considerable labour and expense, projected and put forward a scheme of a railway, which had ever since been known by the name of "The Southampton, Manchester, and Oxford Junction Railway;" and that he had made known his scheme to the public by advertisement and otherwise; and that several persons of wealth and importance had expressed their readiness to assist the plaintiff in promoting the said scheme, and in forming a company to carry the same into effect; that, on the 19th of the same month, a return of all the necessary documents was duly made at the Registry Office, and a preliminary prospectus of the said scheme, signed by one of such persons, as one of the promoters thereof, was duly registered at the same office, in compliance with the act of Parliament in that behalf; that a meeting was held at the Hall of Commerce, in the city of London, whereat the plaintiff made a full statement of the objects and advantages of the proposed scheme, and of the steps he had

on the ground that the other shareholders of the company ought to have been made parties to the record.

taken up to that period for carrying it into effect; and that thereupon resolutions were passed, to the effect that the meeting viewed the undertaking in question as a sound and useful project, and likely to be remunerative to the shareholders; that the plaintiff should be requested to continue his exertions for the accomplishment of that object; and that certain persons therein named, all of whom were defendants to the bill, should form a provisional committee for the purpose of forwarding the project: and the bill stated that the persons so named had consented to become, and had since acted as, members of the provisional committee, and were severally shareholders in the company. The bill then stated, that, during the meeting, it was suggested to the plaintiff by the defendant B. Oliveira, the chairman, that it was usual for the projector, solicitor, and other officers of similar schemes to take upon themselves the sole risk and responsibility of the undertaking, and to indemnify the committee therefrom; and that the chairman handed to the plaintiff the draft of an agreement to that effect, which he stated had been entered into in reference to another similar project; that the plaintiff, relying on the good faith of the committee, that he would be continued solicitor to the project, and be paid his costs, &c. immediately upon a sufficient amount of deposits or assets being obtained for that purpose, at once acceded to the proposition; and that a memorandum of the agreement was, with the consent of the plaintiff, appended to the minute of the resolutions, and signed by the chairman on behalf of all present, which was as follows:—"Memorandum.—The solicitor and other officers, as they may be appointed, hereby pledge themselves to pay all preliminary expenses, and hereby give a general indemnity to the provisional committee, collectively and individually, against all costs and charges of any sort that may be incurred in prosecuting or promoting this scheme up to the payment of the deposits, to which fund alone they look for payment of such expenses and disbursements, and the reasonable proper costs of the said officers, out of the said deposits." The bill then stated that the plaintiff, on the requisition of the chairman, sent a printed agreement, signed by him, to each member of the committee, which was as follows:—"I, the undersigned, being the solicitor to the above project, do hereby declare and agree, that I do not hold any patron or member of the provisional or managing committee thereof in any way liable or responsible to me for the repayment of any monies I may have expended or shall expend in the projecting, promoting, or prosecuting this project, or for the payment

of any charges for professional or other services rendered by me in relation thereto, or in any way connected therewith; and I declare and agree, that I look to the deposits or joint stock of the said company alone as the fund and means of repayment of such disbursements, and payment of professional and other services. And I undertake to pay and discharge all expenses incidental to the said project and the prosecuting thereof, and the formation of the company, up to the time of payment of deposits upon shares sufficient in amount to repay, satisfy, and discharge all payments, disbursements, and liabilities made or incurred in respect to the matters aforesaid, or any of them, up to that time; the said deposits or joint fund being held liable for such purpose by the directors or trustees of the company." The bill went on to state that the plaintiff's whole time and exclusive attention was devoted to the concerns of the company; and that he was registered as their solicitor, and prepared advertisements, &c., and expended large sums of money out of his own pocket, and incurred great liabilities; and that the scheme became a great favourite with the public, the applications for shares being ten times as numerous as the shares, which consequently rose to a high premium. The bill then stated that the deposits paid in amounted to 50,000*l.*; and that the necessary parliamentary contract and subscribers' agreement were signed by the several persons to whom shares had been allotted, and in particular by all the defendants, previous to their receiving the scrip certificates; that the subscribers' agreement, after appointing the defendants as the provisional directors, provided, that, to constitute a board, three members of their body at least should be present; that the said directors should have full power, out of the monies which should come to their hands, or be placed to their credit by way of deposit, or payment of calls, or otherwise in relation to the said undertaking, to make such deposits or investments as then were or might be required by the then present or any future Standing Orders of both or either of the Houses of Parliament; and also to pay and allow all such fees, salaries, and recompense to bankers, counsel, solicitors, &c., who might be employed or retained, or who might then have been already employed or retained in the projecting of the said undertaking, or in supporting and protecting the interests thereof, or in opposing any competing projects, scheme, line or lines of railway in Parliament, or otherwise in relation to the said undertaking as they should think right, and generally to apply such monies in or towards the fulfilment of any bargains, engagements, contracts, or

equitable lien in respect of the amount, which, upon taking such account, should be found due to him; and that the defendants might be decreed to pay such balance or amount to the plaintiff; and that in the meantime the said defendants might be restrained by injunction from parting with, depositing, or assigning, transferring or disposing of, the monies and securities of the company. To this bill the defendants demurred generally, for want of equity and for want of parties.

Sir *James Wigram*, V. C.—I have read the papers in this case; and I am glad to find a ground satisfactory to myself upon which to overrule the demurrer, without giving an opinion upon the important points of law which have been argued before me. I say I am very glad, because the arguments upon several of those points depended upon the verbal criticism of the bill, which the plaintiff, by filing a new bill or by amendment, might easily have avoided, and made a demurrer impossible; and there is very little use in demurring in a case depending upon verbal criticism. The first and principal point argued was founded upon the late act, 7 & 8 Vict. c. 110. It was said, that these railway companies are within the act; and that it appeared upon the face of the bill that the provisions of that act had not been observed; that the whole transaction was, therefore, illegal; and that no contract between the plaintiff and the provisional committee could be a valid contract, which the Court would enforce. I do not mean to give an opinion upon that question; but I must assume, for the purpose of the argument, that this case was within the provisions of the act. The bill alleges, in very general terms, that certain steps were *duly* taken, with a view to the registration of the proceedings of the company. Nothing can be more unsatisfactory than the general allegation of steps being duly taken. Very frequently, that general form of statement is adopted for the purpose of evasion. Looking at this bill throughout, it appears that the plaintiff alleges that all the subsequent steps stated to have been taken by the company were duly registered; and he goes on to allege specifically all the various steps which have been taken, namely, the appointment of the provisional directors, for the purpose of carrying on the project, the compliance with the Standing Orders, and that they are about applying to Parliament. What the defendants require the Court to do is this: admitting that they are acting as a company, and that their right to do so is entirely founded upon steps taken which they say were illegal, they call upon the Court to infer, from the general allegations in the bill, that certain steps have not been taken; but they admit that they have acted since their formation, and are

now acting, as a company, and are about to go to Parliament; yet they ask the Court to assume that these general allegations are untrue. I cannot, upon general demurrer, make that assumption. The defendants admit all the specific allegations in the bill, and, if those allegations are true, they are now acting as a company, and found their proceedings entirely upon the preliminary steps which have been taken by the plaintiff in the cause in their behalf. That leaves the case free from difficulty. The next question is upon the contract itself. A provisional committee has been appointed on the 27th August, 1845; a circular letter has been signed by the plaintiff, upon the requisition of Mr. Oliveira, acting on behalf of all, and it is on their behalf the circular has been issued. This has been acquiesced in, and the plaintiff has taken all the steps out of which his present claim arises upon the faith of that circular and the document signed by Mr. Oliveira. Assuming, for the present, that the contract is a legal one, the question is, how far the present company will be affected by it. The bill states the agreement which has been made by the provisional committee. It then goes on to state the subsequent proceedings under which the provisional directors have been appointed, and the company has acted—the allotment of shares, the payment of deposits to the amount of 50,000*l.*, and the carrying on of the affairs of the company. Under these circumstances, if there has been one continual transaction, in which the provisional committee acted at first, and in which they acted since, I must assume that the provisional directors of the company are now proceeding upon the basis of what has been done by the committee, (for there has been no interruption); and they are bound by a legal contract made by them for the payment of expenses properly incurred in the preparation of a scheme which has been acted upon, and carried on down to the present time. This conclusion is inevitable. Upon the bill before the Court, I am bound to say, that, if it is a legal agreement, the company are bound by what has taken place. It is said, however, that the agreement is altogether illegal, that the provisional committee are to be viewed as trustees for the company, and that, being so, they did an illegal act when they contracted with Mr. Parsons, who was solicitor to the company, that they, the provisional committee, should not be personally liable to the solicitor, but that the solicitor should be paid out of the fund. The argument is, that the trustee has no right to make that species of contract, because (as it was said) it deprived or intended to deprive, the cestuis que trustent

of the benefit of that security which they would have from the diligence of the trustee himself, if he were acting upon his own personal responsibility. I cannot accede to the correctness of that argument in the way it is stated. Primâ facie, the trustee has a right to be indemnified by his cestuis que trustent before he incurs any liability. An indemnity is not often required, because, generally speaking, a trustee retains in his hands funds by which he is able to indemnify himself; and he is always allowed to indemnify himself, the Court never taking the fund out of his hands until he has been paid all expenses properly incurred. Wherever a trustee is acting, the cestuis que trustent have this security, that the Court will allow the trustee no expenses but what are properly incurred; but every step which a trustee takes is a step taken with knowledge on his part that he will be indemnified for all the expenses properly incurred. I do not, therefore, see, upon the specific allegations contained in this bill, of what security the cestuis que trustent are deprived, (if they are deprived of any), which they are not liable to be deprived of by the general rules of the Court. It does not appear to me that they are deprived of any; they can always have the conduct of their trustee investigated; and the latter will not be allowed any expenses which are not properly incurred. Upon this ground, (not meaning to intimate that there might not be cases in which such an objection might apply), I am of opinion, that, in this case, there is nothing to shew any illegality in the contract. Another ground upon which the illegality has been argued is, that it is a contract by a solicitor with his clients for security for his costs; and that no solicitor can be allowed to contract for a security for his expenses, before those expenses have been incurred, whether professional or for costs out of pocket. Assuming that to be the rule of the Court, this question certainly does arise: if the client, being a trustee, agree with a solicitor that he shall not make a demand upon him personally, but that when the funds are in hand he shall be paid out of the funds such claim as he has a right to make against the fund; if such a contract were made, it appears to me impossible to distinguish it from the general case relied upon in argument. I do not, however, think it is necessary to say more than this, that the present case does not fall within the general rule, because, looking at the two documents, the one signed by Mr. Oliveira, on behalf of the company, and the other signed by the plaintiff, and circulated at the request of Mr. Oliveira, and acquiesced in by the company, I think, upon a fair con-

struction of these two instruments, and the facts stated in the bill, there were some expenses incurred by the plaintiff in promoting the scheme, prior to the appointment of the provisional committee, to the payment of which he might be entitled. There is nothing illegal in the contract that he should, out of the deposits, be paid those expenses which have been incurred in the preparation of the scheme adopted by the provisional committee on the 27th August; and, if so, there will be sufficient to entitle the plaintiff, upon the bill, to some relief, although he may not be entitled to all he asks. The next objection (which is merely a verbal criticism) is, that it does not appear in the allegations in the bill, or rather that it is excluded by those allegations, that the provisional committee, or any member of it, had paid up the calls. It does not appear to me necessary to go into that question, according to my view of the matter. Supposing, however, that it were necessary, I should say, that, upon the allegations in the bill, it must be taken that the members of the committee have paid up their calls. For, although the case is open to this verbal criticism, that persons are alleged, in terms, in one part of the bill, to have paid up their deposits when their shares were allotted to them, yet it is consistent with the preceding allegations that some of those shares may have been allotted to the provisional committeemen; and the bill expressly alleges, that all the members of the provisional committee are shareholders. I cannot assume that the calls have not been paid, but it is immaterial in the view I take of the case. There is nothing illegal in the contract with Mr. Parsons, that he should, out of the deposits, be paid those expenses which have been incurred in the preparation of the scheme which has been adopted by the provisional committee. Upon the question of parties, the bill charges that every one of the defendants are provisional directors. Now, it is said, that if there are any calls which have not been paid in full, or which have not been paid at all, the plaintiff has no right to a lien upon the paid deposits. The plaintiff alleges that the number of the shareholders is so great, that he cannot name them. If all those who are named upon the record, and who are all the provisional directors of the company, opposed the claim in toto, I do not know how I can require the plaintiff to do more. The demurrer must, therefore, be overruled upon both points.

A solicitor had projected a rail way company, had

Columbine v. *Chichester*, (10 *Jurist*, 606, *June 24th*, *July 9th and 11th*, 1846).]—The bill in this case was filed by David Edwin Colum-

caused it to be advertised and surveys to be made, and had received applications for shares, and made inquiries as to the applicants, &c.; he then made an agreement with the provisional committee of the company to sell to them all his interest in the company, and the materials he had collected, in consideration of a sum of money, of 1000 shares to be allotted to him, on which the deposit should be considered as paid, and of being employed as joint solicitor to the company, which latter part of the agreement was abandoned. A demurrer for want of equity to a bill filed for the specific performance of this agreement was overruled by the Vice-Chancellor of England, but afterwards allowed on appeal by the Lord Chancellor.

bine against Sir J. P. B. Chichester, and twelve other persons, who were stated to be members of the provisional committee of the Direct London and Exeter Railway Company. It stated, that, in the month of May, 1845, the plaintiff, with the assistance of one William Ancrum, projected the formation of a joint-stock company, for the purpose of constructing a railway between London and Exeter, and caused the said joint-stock company to be duly registered. It then stated various proceedings by advertisement, and by holding meetings taken by the plaintiff in order to form the said company. That, in order to further the formation of the said company, the plaintiff, at his own expense, took various journeys to the several towns and places of importance along the line of the proposed railway, and had interviews with various landed proprietors and other persons of local interest, and solicited and procured the promise of their support and influence in favour of the said company; and he also caused a preliminary inspection and general survey to be made of the line of country through which the said railway was intended to pass, and received applications for shares from responsible persons, addressed to himself as the promoter of the said company, amounting to 300,000*l.* and upwards; and the plaintiff caused the said applications for shares to be arranged and classified in alphabetical lists, and proper and complete inquiries to be made, and evidence obtained as to the respectability and responsibility of the several applicants for shares. That, in the month of September, 1845, certain persons (among whom were some of the defendants) agreed to act as a provisional committee for the purpose of completing the formation of the said company and conducting and managing the affairs thereof, and continued to act as such provisional committee down to the time of entering into the agreement next mentioned. That (after certain negotiations) it was agreed between the plaintiff and the said provisional committee, that, in consideration of the plaintiff giving up to them all his interest in the said company, and as a remuneration for the pains and trouble which plaintiff had been at in procuring and completing the formation of the said company, plaintiff should receive 1500 shares in the said company, on which a deposit of 1*l.* 7*s.* 6*d.* per share should be considered as paid; and it was further agreed between plaintiff and the said provisional committee, that plaintiff should be retained as solicitor for the said company, jointly with some other firm of respectability, to be appointed by the said provisional committee; and it was further agreed between plaintiff and

the said provisional committee, that the said agreement between them and plaintiff should take effect as from the 16th September, 1845, and, accordingly, plaintiff, on the 29th September, 1845, drew up a memorandum of agreement to that effect, which was signed by the plaintiff, and entered into the minutes of the proceedings of the said committee. That the plaintiff, in performance of the said agreement on his part, gave up to the said provisional committee the entire and exclusive management of the said company, and placed at their control all the papers, and particularly the various applications for shares in the said company, and the arranged lists thereof, and the evidence obtained by the plaintiff as aforesaid, as to the character of the applicants, and the plaintiff thenceforth ceased to have any control or take any part in the management or conduct of the affairs of the said company, except as joint solicitor, and as acting under the direction of the said committee; and the said provisional committee, in part performance of the said agreement on their part, paid and discharged the liabilities which plaintiff had incurred in the formation of the said company. That the said provisional committee, after their said agreement with plaintiff, made an allotment of shares in the said company to various persons, and received deposits thereon to a large amount, and they might, if they had thought proper, have made allotments of shares to respectable and responsible applicants, to the extent of the whole amount of the capital required for the said company; and they in fact represented that they had allotted the whole of the said shares, and published an advertisement to that effect. That the said provisional committee, after the allotment of the said shares, caused a subscription-contract to be prepared and executed by the several shareholders in the said company, and thereby certain persons were appointed the provisional committee, with certain powers. That, shortly after the allotment of shares had been made in the said company, disputes and differences arose between various members of the provisional committee as to such allotments, and the manner in which the same had been made. The bill then stated several proceedings, and that the undertaking had declined in public estimation, and several letters and negotiations between the plaintiff and the committee were set out. That, on the 13th December, 1845, a meeting of the said provisional committee was held for the purpose of discussing with the plaintiff the manner in which the said agreement should be performed, and, after some discussion, it was proposed by the plaintiff, and agreed to by the said committee,

that, instead of receiving 1500 shares in the said company, the plaintiff should receive 1000 shares with the deposit paid up, and the sum of 812*l.* 10*s.* in cash; and the said Sir J. P. B. Chichester drew up a memorandum in writing, containing the said terms so proposed by plaintiff and agreed to by the said committee, and the said memorandum was signed by the said Sir J. P. B. Chichester and A. W. Hillary on behalf of the said company, and taken possession of by the said Sir J. P. B. Chichester. That a meeting of the said provisional committee was held on the morning of the 15th December, 1845, and that the plaintiff attended such meeting, and, at such meeting, a resolution was duly passed and entered in the books of the said committee, confirming the said agreement, as varied, and directing the payment of the said sum of 812*l.* 10*s.*, and the delivery of the said 1000 shares in the said company, to plaintiff; and, at the same meeting, and after the said resolution had been passed, a cheque for the said sum of 812*l.* 10*s.* was drawn and signed in favour of the plaintiff for the purpose of being paid to plaintiff, in part performance of the said agreement; but the said meeting broke up suddenly, in order that the members thereof might attend a meeting of shareholders, and the said cheque was by accident not then delivered to plaintiff. That the said public meeting of shareholders was held pursuant to the said advertisement; and at such meeting the said Sir John Palmer Bruce Chichester, as the chairman of the said company, and with the privity of the several members of the said provisional committee, produced and read a statement of the affairs of the said company, in which the said provisional committee took credit for a sum, which comprised the sum of 812*l.* 10*s.*, the amount of the said cheque, and also the amount of 1*l.* 7*s.* 6*d.* per share on 1000 shares, agreed to be delivered to the plaintiff, with the deposit paid up, as before mentioned. The bill charged, that the stipulation as to the employment of the plaintiff as such solicitor as aforesaid had been abandoned by the plaintiff and the provisional committee, and that the plaintiff had for some time ceased to be the solicitor of the said company. And it charged, that, at the date of the said agreement, the project for the formation of the said company was of great value, and that the plaintiff had expended time, labour, and skill in maturing the same, and had collected much information and many materials towards the formation of the said company, and particularly in respect to the number and arrangement of the applications for shares in the said company, and the collection of evidence relative to the responsi-

bility and solvency of the persons applying for such shares; and that the materials and information so collected by plaintiff were obtained by great pains and labour, and that the same were necessary and essential to enable the said committee to make a proper allotment of shares in the said company; and that the said committee, by virtue of the said agreement of the 16th September, 1845, had the full benefit of the said materials and information. That the said project was also of great value, by reason that, the same having been registered previously to the 29th July, 1845, a deposit only of 5*l.* per cent. upon the capital was required by the standing orders of the House of Commons. That, upon the faith of the said agreement, dated 16th September, 1845, being performed by the said provisional committee, plaintiff gave up to them, and they took possession of the entire management of the said project, and all the papers, documents, and information in plaintiff's possession or power relating thereto, and, in particular, the said lists of applications for shares so as aforesaid arranged, and also the said information so as aforesaid obtained, with reference to the said applicants. The bill contained various other charges, and a charge that the shareholders in the said company were very numerous, and could not, without the greatest inconvenience, be made parties to this suit; and that the defendants had been duly constituted and appointed by the shareholders in the said company, and are trustees of the said company, with full power to manage and conduct the affairs of the said company, and fully represented the rights and interests of the shareholders in all matters relating to the said company. And the bill prayed, that it might be declared that the defendants were bound by virtue of the agreement of the 16th September, 1845, and the minute or memorandum varying the terms thereof, made at the said meeting of the provisional committee on 15th December, 1845, and might accordingly be decreed to perform the same, and for that purpose to pay the plaintiff the said 812*l.* 10*s.*, and also to deliver to the plaintiff scrip certificates for 1000 shares, of 25*l.* each, in the said company, with a receipt of acknowledgment that 1*l.* 7*s.* 6*d.* upon each of such shares had been paid up by the plaintiff; and that it might be declared that the plaintiff was entitled to a lien upon the monies and funds of the said company for payment of the said sum of 812*l.* 10*s.* To this bill one of the defendants demurred for want of equity, and for want of parties, because the shareholders were not parties, and because certain other persons were not parties.

Cases in Equity.

Columbine v. Chichester.

Sir *L. Shadwell*, V. C. of England.—Now, with respect to the substance of the demurrer, I must say that it is my opinion that a sufficient case is stated upon the bill. I am going to make an observation with reference to what is apparently the truth of the case; because it really seems to me, from the manner in which the bill is stated, that it may be taken to represent the real facts of the case. I must say it does appear to me, that, if the transaction was really such as does appear upon the face of the bill, then there is nothing whatever to impeach the conduct of Mr. Columbine, because what is represented is this: that he, at the suggestion of his own mind, made various inquiries, had correspondence with a great number of persons, and acquired a vast deal of information, from which it appeared to him that the particular railroad in question—a direct railroad, I think, from London to Exeter—might be made, and advantageously made, to all those who were willing to become shareholders. The expression is, "in the company for the making of the railroad;" and, having done that, he made a provisional registration, and he treated with certain persons, who agreed that, if he would but give up to them all the information he had acquired, and the books, papers, and so on, that they would give him a remuneration, which was to consist in having 1500 shares, at a deposit of 1*l.* 7*s.* 6*d.* per share, presented to him, so that he should be freed from the obligation of paying the 1*l.* 7*s.* 6*d.*, and have the benefit of the shares. Well, now, I do not myself conceive that there was anything wrong in that,—the thing in itself was fair,—and the only possible mode of disputing it would be by saying that too much was given. It really does not appear that any sort of deceit was used, or any unfair influence; and those who were to judge of the matter themselves did agree that such should be the payment made to Mr. Columbine; and I really, therefore, cannot see that there is any objection whatever upon the face of the transaction here. It is true that the agreement also contains a certain stipulation that he should be employed as the solicitor, but it is stated that that has long since been abandoned; and, if an agreement had once been made between A. and B., which did contain something that would vitiate it, still, when the parties mutually released each other from that portion of the agreement, I apprehend that the agreement becomes perfect, and such as a court of equity will sanction. Then, it appears that this agreement, having been made in the manner that is stated in the bill, received a subsequent variation by what took place in the month of December; but that amounted only to this, that,

instead of his receiving the 1500 shares, with the deposit, as it were, paid up, that he should receive 1000 shares with the same amount of deposit, which is 1*l.* 7*s.* 6*d.*, paid up, and also a sum of 812*l.* 10*s.*, which was nothing more than converting 500 of the shares into money, and giving him the value of that, at 1*l.* 7*s.* 6*d.*, in money, and 125*l.* more: that was the whole of the variation. Now, I cannot myself but think that the matter is stated with sufficient clearness and precision, and that it consisted, first of all, in Mr. Columbine writing out a memorandum that a meeting was advertised, and that it was proposed by the plaintiff, and agreed to by the committee, that, instead of receiving 1500 shares in the said company, the plaintiff should receive 1000 shares; and that Sir John Chichester drew up a memorandum in writing containing the terms as so proposed by the plaintiff and agreed to by the committee, and that such memorandum was signed by Sir John Bruce Chichester and Augustus William Hillary, on behalf of the company, and taken possession of by Sir John Bruce Chichester; and then there was a resolution agreeing to all that: and, therefore, it appears to me that the agreement is in its terms sufficiently precise, and in its form such as the Court can act upon. And then, with respect to the objection that there was no mutuality, why, the plaintiff, in the most distinct terms, has stated that he has performed all that he undertook to perform. [His Honor then read the statements and charges in the bill as to what the plaintiff had done in forming the company, and as to what he had given up to the committee.] But it is said that the bill asks, in effect, to have that done which cannot be done. Now, if the bill, in distinct terms, had stated that all the shares had been allotted, I admit there would have been some foundation for that allegation; but I do not find anything that amounts to any such allegation; and I particularly, in the course of the argument, found out, as well as I could, the passages which relate to the allotment, and I must say they do not appear to me to amount to an allegation that all the shares have been allotted. In the first place, the provisional committee had the power of allotting all the shares, and that power remains, except so far as appears upon the face of the bill that it has been taken away. Now, what is stated shews this, "That the provisional committee, after their said agreement with the plaintiff, made an allotment of shares in the said company to various persons, and received deposits thereon to a large amount, and they might, if

they had thought proper, have made allotment of shares to respectable and responsible applicants to the extent of the capital required for said company." It states, that they might have done so if they had thought proper, but there is not any statement whatever that they have done so; and the mere statement that they have made some allotment of shares is no statement that they have allotted all the shares. Well, then, it states next, "that the provisional committee, after the allotment of the said shares," which is the allotment before spoken of, which is an allotment of some shares, and not an allotment of all the shares, "caused a subscription-contract to be entered into;" and then it states that differences and disputes arose. That, however, is still only referring to what had before been stated, namely, that there were allotments made of some shares; and I believe that those are all the passages which, in effect, refer to this particular part of the case; and it does appear to me, that I am not at liberty to assume, upon the face of this bill, that those who have the direction of the affairs of the company have not now a power of allotting shares; and I do not myself see what stress is to be laid upon the fact that the plaintiff speaks about scrip certificates, because I apprehend they would be scrip certificates until all the deposits are paid up, and then the parties would only become shareholders in the sense of being entitled (by means of the registration of their names as shareholders who have paid up all their deposits) to be considered not as holding anything by virtue of scrip certificates, but as being shareholders. Therefore, it appears to me, when this gentleman is asking for scrip certificates, he is asking for the very thing that was bargained for, but expressed in other terms, namely, shares to be allotted with a certain deposit to be considered as paid up. Then, it is said that the committee had no power to allot shares, except by receiving the deposit, which really appears to me to amount to nothing, because they had power to allot shares and receive deposits; but if they owed money to a person who came for shares, and they merely allotted to him as many shares as would make the deposit upon them amount to equal the amount of the debt, is it necessary that the formality should be gone through, of his first of all handing the amount of his debt to them in the shape of the deposit on shares, and that then they should hand back what they have so received for deposit and shares to him in payment of his debt? It seems to me to be quite idle to insist upon any such formality. Now, it appears to me, I confess,

therefore, that, upon the substance of the case, the plaintiff is right; and I do not think that the question about the 812*l.* at all affects the case, because it is not a mere asking for money, but it is asking that the plaintiff may be placed in a specific character by having these scrip certificates allotted to him, with a certain understanding that the deposits are to be considered as having been paid. Well, then, there is an objection for want of parties; but, in the first place, it is charged by the bill that there are monies in the hands of the provisional committee, and there is no personal demand made against any shareholder; there is nothing more in effect asked, than that the debt should be paid which was incurred for the purpose of constituting the company itself; and I cannot myself but think, that, if I do not attend to the allegation which is contained in this bill, that the shareholders in the company are very numerous, and that they cannot, without the greatest inconvenience, be made parties to this suit, I shall be actually denying to the plaintiff the justice which is due to him in the present case. Now, all that is asked is only, that, out of monies now in the hands of the provisional committee, the demand shall be paid; and I do think, attending to that allegation and the nature of the relief which is sought by this bill, that the demurrer must be overruled.

Bacon submitted to the same decision on behalf of his client.

[Since the foregoing case was determined by the Vice-Chancellor, Lord *Cottenham* (29th July, 1845) allowed the demurrer on appeal, upon the ground, that it did not appear from the statements on the bill that the defendants had any shares or scrip certificates which they could deliver to the plaintiff.]

In re Sir George Stephen (*Ex parte Bass*, 10 *Jurist*, 585, *July 4th, 7th, 8th, and 9th*).]—This was a petition of Mr. Michael Thomas Bass, of Burton-upon-Trent, brewer, and was presented in the matter of an act of Parliament passed in the 7th year of the reign of her present Majesty, intituled "An Act for consolidating and amending several of the Laws relating to Attornies and Solicitors practising in England and Wales," and in the matter of Sir George Stephen, Knight, Benjamin Walker Hutchinson, William Rogers, Richard Baverstock, Brown Cobbett, Robert Henry Wilson, and John Owens. It stated, that, in the month of April, 1845, the London and Manchester Direct Independent Railway Company was projected according to a design

On a petition by a shareholder in a railway company for the delivery and taxation of a bill of costs of the former solicitors to the project, they having been paid a gross sum in full of all demands, and given an undertaking to the parties who paid it to deliver a bill of costs, the Court, under the special circumstances of the case, ordered the petition to stand over, without prejudice

to any suit, with liberty to institute a suit, and with liberty generally to apply.

or plan devised by Mr. Remington, it being proposed that the capital of the company should consist of 3,000,000*l.* divided into 60,000 shares of 50*l.*; that this undertaking was duly advertised, but in July following it was proposed to add a branch to Crewe, in the county of Chester, and a point in the main line near Tean, in Staffordshire; that, for this purpose, it was proposed to increase the capital from 3,000,000*l.* to 5,000,000*l.*, to be divided into 100,000 shares of 50*l.* each; that this company was duly registered; that a provisional committee was appointed; that, in August, 1845, the petitioner, Mr. Bass, consented to take shares in the company, and to become a member of the committee; that he signed the consent form, the agreement to take shares, the parliamentary contract, and the subscribers' agreement; that, by this last agreement, it was provided that the directors, or any board or meeting, should have full power for carrying all or any part of the undertaking into effect, and for that purpose to buy up and amalgamate with any railway made or projected, canal, branch railway, or tramroad, or other interest, and generally to adopt all such measures for the benefit and furtherance of the line as the board of directors, or the several committees of management constituted and authorised for that purpose, might, in their judgment, consider necessary and expedient, and might be advised to adopt; that the directors should have full power to appoint, suspend, or remove and re-appoint bankers, solicitors, engineers, surveyors, secretaries, clerks, agents, &c., and that a deposit of 2*l.* 15*s.* per share should be paid by each subscriber at the time of executing the agreement; that the petitioner was chosen a member of the committee on the 23rd August, 1845, and on the 21st November he bought thirty shares in the undertaking of a Mr. Lee, upon which the deposit had been paid; that the scrip was delivered to him, and continued in his possession; that the respondents were appointed joint solicitors of the company, and continued until November, 1845, when they were discharged; that whilst they continued such solicitors, they were employed in taking journeys, answering letters, preparing and ingrossing deeds and other documents, serving notices, and in transacting various other matters of business necessary to be done in the formation of the company and preparing to apply to Parliament, and as such possessed themselves of divers plans, deeds, books, papers, and writings belonging to the company; that, in May, 1845, the Direct London and Manchester Railway was projected, being known in the railway market

as Rastrick's company; that, early in October in the same year, the acting committee of Remington's company were desirous of effecting an amalgamation of the two companies, and proposed to open a negotiation for that purpose; that the amalgamation was strongly opposed by the respondents, some of whom refused to afford any assistance in carrying it into effect; that differences arose, in consequence of this refusal, between the committee of Remington's company and the respondents; that the committee then entrusted the management of the preliminary arrangements for the amalgamation to Mr. Owens; that the terms of the union of the two companies were finally agreed upon by their committees on the 25th October, 1845; that, by the terms of the agreement between the two companies, it was arranged that the committee of Rastrick's company should abandon their intention of applying to Parliament for an act to authorise the construction of Rastrick's line, and that a joint committee of the two companies should be formed, and their capital united; that, in November, 1845, the committee of Remington's company were informed that the respondents intended, notwithstanding what had passed between the two companies, and without the authority of the committee of Remington's company, to insert the requisite parliamentary notices; that the acting committee immediately resolved that each of the solicitors should be requested not to insert such notices without their written authority, under the hand of the chairman of the company; that, three or four days afterwards, application was made by the solicitors, the respondents, for payment, on account of the costs, although no bill had been delivered; that the sum of 2000*l.* was paid to Messrs. Stephen & Hutchinson, Mr. Rogers, Mr. Owens, and Messrs. Wilson & Cobbett, and they were requested to make out their claims against the company up to the 1st November inclusive, and send them, that the same might be examined and discharged; that, on the 13th November, all the respondents, except Mr. Owens, caused the insertion of notices in the Gazette, contrary to the resolutions of the 4th of the same month, whereupon the committee resolved, "that as the solicitor had disobeyed the orders of the board, and had acted against their explicit and direct commands not to insert any notice of application to Parliament, the committee dismissed the respondents Stephen & Hutchinson, Wilson, Cobbett, and Rogers from being the solicitors of the company," and desired them to send in their bills with a view to their payment; that the committee also

or plan devised by M[illegible] could not pay any expenses incurred by of the company [illegible] and publishing since the 4th November; of 50*l.*; that [illegible] issued, signed by Colonel Stanhope as chairlowing it [illegible] public that the notices which had been given Chester [illegible] in reference to the London and Manchester Direct that [illegible] Railway had been issued against their express con- 3,0[illegible] contrary to agreement; the resolution of dismissal was [illegible]; that the respondents, being dissatisfied, threatened to [illegible] for an injunction to restrain the committee of the amalgamated companies from using the plans, sections, and other documents which they had in their possession, and which had been prepared for Remington's company; that, it being necessary that the plans and sections, and parts of the book of reference, should be deposited in the office of the Board of Trade, and of the clerks of the peace of the several counties, on or before the 30th November, the committee of Remington's line, being apprehensive of a delay by which they might lose the next session of Parliament, applied to the respondents to withdraw their opposition, and deliver up their plans and sections upon payment of their costs; that the respondents agreed to do so, but they insisted upon being paid 23,000*l.*, in satisfaction of their bill of costs, exclusive of the costs of Mr. Wilson and Mr. Owens, and the respondents Stephen & Hutchinson, and Rogers and Cobbett promised, that upon payment of the 23,000*l.*, they would remain neuter in all future proceedings, resign their office of solicitors, and deliver up all plans and papers in their possession. On the 18th November, Messrs. Stephen & Hutchinson, with the privity and approbation of Messrs. Rogers and Cobbett, sent to Colonel Stanhope, as chairman of Remington's company, a letter to the following effect:—

"Furnival's Inn.

"Dear Sir,—On having our costs settled in the form proposed, we undertake to remain neuter in all future proceedings respecting the two companies to Manchester; and also we resign our office as joint solicitors to the Direct and Independent Railway Company; it being agreed that an advertisement shall be published in the daily papers, and at Manchester, acknowledging that our professional services to the company have been of very great value, but, being adverse to the general course of policy of the present board of management, we have resigned our office: on receipt of the said costs we will deliver up to

the plans and papers in our possession, and shall be happy to you with any information in our power.

"We have the honour to be,

"Your very faithful servants,

"STEPHEN & HUTCHINSON.

"To the Hon. Colonel Stanhope."

That, on the same day, Messrs. Stephen & Hutchinson signed and sent to the acting committee of Remington's company the following document:—

"We undertake that Messrs. Cobbett and Rogers shall each give a receipt in full discharge of all costs due to them from the London and Manchester Direct and Independent Railway Company, on the same terms as are contained in our letter of this day, addressed to the chairman, on receiving 5000*l.* each, being 10,000*l.* for the two.

"STEPHEN & HUTCHINSON."

That a meeting of the members of the joint committee of the companies was held on the 21st November, and the committee then determined not to entertain the proposal at that time, and the question was postponed until the 24th of the same month. The petitioner stated, that having received a letter from a member of the joint committee on the 22nd, he came up to London to attend the meeting on the 24th, at which he expected that the assent or dissent to the proposition of Messrs. Stephen & Hutchinson would be decided. That, on his arrival in London, he was informed that five of the members of the acting committee of Remington's company, who had been attending the joint committee, after they had retired from it on the 22nd, had drawn cheques for the purpose of discharging the accounts of Messrs. Stephen & Hutchinson, Rogers, and Cobbett; that for Messrs. Stephen & Hutchinson, 18,000*l.*; that for Mr. Rogers, 5000*l.*; and that for Mr. Cobbett, 5000*l.* The cheques had been delivered to one of the members of the committee, and by him handed to Sir George Stephen on the same day, when they were paid by the bankers of the company. That the petitioner had been led to believe that the cheques, though drawn, would not be handed to the respondents until a bill of costs had been delivered, and that more would not be paid to them than was justly due. That one of the members of the committee had been so dissatisfied with the transaction, that he had written to

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"STEPHEN & HUTCHINSON."

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the bankers for the purpose of stopping payment of the cheques; but, on being told that the documents in the respondents' possession were wanted by the company that evening, and could not be obtained untill the cheques were paid, the letter to the bankers was withdrawn, and the fund released. That a protest against the payment was immediately entered by Colonel Leicester Stanhope, in these terms:—

"Protest of Colonel Leicester Stanhope.

"I do protest against giving Sir George Stephen, Messrs. Hutchinson, Cobbett and Rogers, the enormous sum of 28,000*l.*, especially without the official consent of the amalgamated board to their portion of the account."

That Major Waller, another member of the committee, concurred in the protest, as did the petitioner also. That the respondents had not, at the time of receiving the cheques, given any receipt, but that they did so on the 24th November, when they gave the following memorandum:—

"It being fully understood that all claims and questions are this day finally settled and for ever concluded between us and the London and Manchester Direct and Independent Railway Company, and we having severally given receipts in full of all demands upon this understanding, we promise to deliver a bill of costs with all practicable speed, the delivery of them hereafter being one of the conditions of the settlement, and that settlement proceeding on the basis, that all differences, whether pecuniary or otherwise, are finally and amicably adjusted by payment of the sums which we have respectively received.

"Stephen & Hutchinson,
"George Stephen, for R. B. B. Cobbett and W. Rogers.

"November 22nd, 1845."

The petition concluded by stating that the respondents, although applied to by and on behalf of the acting committee for the delivery of their bills of costs, had not done so, whereupon the acting committee had resolved that legal measures should be taken to enforce the delivery of the bills and their taxation. The prayer of the petition was, that the respondents might be ordered to deliver a bill of costs, fees, and disbursements claimed to be due to them in matters wherein they had been employed as attornies and solicitors for the company, the petitioner undertaking to pay to them what might be

found due upon taxation; and that it might be referred to the taxing Master to tax the bill; and that an account might be taken of all money received and paid by the respondents on account of the costs; that they might, in taking such account, be charged with the several sums of 2000*l.*, 18,000*l.*, 5000*l.*, and 5000*l.*, as monies which had been paid to and received by them on account of their costs; that the respondents might produce before the taxing Master, upon oath, all deeds, books, papers, and writings in their custody or power relating to the bill, or to any of the items or charges, and might be examined upon interrogatories touching the same; and that, in case it should appear that such bill was overpaid, the respondents might refund to the petitioner, as a member of the acting committee or otherwise on behalf of Remington's company, what the Master should certify as having been overpaid. The case made by the respondents was that stated by the affidavit of Sir George Stephen, a part of which was in the following words:—"I, Sir George Stephen, of Furnival's Inn, in the city of London, knight, one of the solicitors of this honourable court, do make oath and say, that, on the 24th day of June last, I entered into partnership with Benjamin Walker Hutchinson, also a solicitor of this court; and that, at the time of commencing such partnership, the said B. W. Hutchinson had purchased an interest as one of the joint solicitors in the London and Manchester Direct and Independent Railway Company, known as Remington's Line, for a large sum of money. And I further say, that, by private arrangement between me and my said partner, it was agreed that my said partner should conduct and exclusively manage all professional business that devolved upon us as joint solicitors in the said undertaking; but, in consequence of a communication made to me by the committee of the company, that my personal assistance was desired by such committee, I devoted myself to the same accordingly, though with the co-operation and assistance therein of my said partner. And I further say, that, at the time of my first becoming connected with the company as such solicitor as aforesaid, the undertaking was, for all practical purposes, in its infancy; for, though the scheme had been for some time before the public, the previous efforts for its establishment had proved fruitless, and the whole undertaking was in abeyance. And I further say, that the office of a solicitor to a railway company, and particularly in relation to its original establishment, is of a wholly different character from that of the ordinary office of a solicitor; and both as respects the nature of the duties to

be discharged, and the extent of its demands on the attention and energies of the solicitor, the employment involves almost the entire abandonment of all other business, and the consequential sacrifice both of profit and connexion, involved in a long and continuous withdrawal from ordinary clients and their affairs. And I further say, that the mental as well as physical labour required far exceeds that of ordinary professional demand, and is universally recognised, accordingly, as requiring a far higher scale of payment, while the nature of the occupation precludes the application not only of the ordinary rate of costs of professional business, but even that of the scale of costs itself as an estimate of value; and, in fact, even with a liberal remuneration for the labour bestowed in the original organisation of a railway undertaking, it is not in this, but in the ultimate profit obtained in the carrying of the undertaking through Parliament, the conveyancing of the line, and the more permanent solicitorship to the undertaking, that the real return is to be found. And I further say, that, on my first attending the committee, I found that the members of it were for the most part inexperienced in matters of railway undertaking, and it gradually devolved on myself, to a considerable extent, both to suggest and prosecute the proceedings necessary to the establishment of the undertaking, and which was allowed to have hitherto failed for want of competent management. And I further say, that, under the circumstances, I projected and advised the adoption of a plan for obtaining provincial support to the undertaking, by collecting public meetings at places most interested in the result, and of informing such meetings of the advantages likely to be derived to their respective trades. And I further say, that it was directly and in terms put to me by the then managing committee, whether I would be responsible for the management of such public meetings, and for addressing them when held, notwithstanding the powerful opposition which might be reasonably expected; and I assented to undertake such responsibility, provided that I was fairly supported by the committee. And I further state, that the committee, after due consideration, adopted the plan which I proposed, and instructed me to follow my own course for carrying it out; and I thereupon proceeded to many places in the north, in company with various members of the committee, for the purpose of collecting public meetings, and of addressing them, and meeting all opponents; it being arranged that my partner was to remain in London to conduct more particularly the business of the company requiring to be transacted

in London. And I further state, that I was engaged upon this duty for a considerable period, to the entire neglect of all other professional and private business; and that I thereby lost, as I verily believe, much valuable connexion, and particularly appointments to other public bodies, of a permanent nature, of which I had received the promise, but which I was obliged to abandon, in consequence of my absence from London, and of my time being wholly monopolised by the duty which I had undertaken, while the time of my partner was equally occupied with the affairs of the company in London; and the general business of our office accordingly was suspended. And I further state, that, by my advice, the said committee determined to conciliate a powerful opposition which had arisen against the intended railway, on the part of the influential landed proprietors, by sending me to call on such proprietors, and to explain the views of the company, and to answer such objections as they severally entertained; whereupon I did call upon all the influential landed proprietors, or upon their agents, on the line between Barnet and Macclesfield, and exerted myself with great success to overcome their objections, and to obtain their assent, and was engaged for several weeks in this duty. And I further say, that, while thus occupied, I discovered many important mistakes that had been committed by the engineers of the company in projecting the line, and making the surveys, which mistakes, in one instance, involved physical impossibilities, and in other instances an interference with private property, to an extent that excited great opposition, and would entail an immense pecuniary compensation; and I reported such errors from time to time to the acting committee, in consequence of which they were corrected. And I further say, that the value of my services in all those different departments was repeatedly recognised and acknowledged in most grateful terms by the managing committee; and that, in several instances, the members of the committee refused to prosecute their mission into the country, unless I was present to bear the brunt of the contest. That, by an indenture, made, I believe, in or about the month of July in the year 1845, between myself, the said Sir George Stephen, and the said B. W. Hutchinson, John Owens, William Rogers, Robert Harry Wilson, and R. B. B. Cobbett, of the first part; the said George Remington, of the second part; H. W. Matthews, of the third part; and the Honourable Leicester Stanhope, James Waller, and John J. Keene, on behalf of themselves and all

other parties who were then, or thereafter should be, acting, or elected to act, as members of the provisional committee or board of directors of the said line of railway, to be called 'The London and Manchester Direct Independent Railway,' and intended also on behalf of themselves and all other persons who were then, or thereafter should be, acting as directors of the same line of railway, of the fourth part; and which was duly executed by myself and the said B. W. Hutchinson, as I believe; after reciting that the said parties of the first and second parts had devoted a considerable portion of their time, and incurred divers expenses in preparing plans and making estimates of the probable cost of the said intended railway, and also in making the necessary inquiries and calculations for ascertaining the present state of the traffic along the course of the said intended line of railway, and the probable amount of the traffic and other sources of profit which might be expected to be available to the said intended line of railway, and also in preparing and printing advertisements and prospectuses, and in adopting other means for making the said intended line known to the public, and also in considering the stations, tunnels, embankments, branch railways, or extensions, buildings, works, and conveniences connected therewith; and also reciting, that the said party thereto of the second part had also incurred divers expenses in and about the premises, and in and about advertising the same, and in and about providing suitable places of meeting for the parties thereto; and also reciting, that it had been agreed, by and between them the said parties hereto of the first and second parts, that the said plans, estimates, and other materials and information should belong to, and become the property of, the said intended company; and also reciting, that, at a meeting of certain gentlemen acting as the provisional committee or board of directors of the said company, to be called 'The London and Manchester Direct Independent Railway,' it was resolved, in consideration of the said plans, estimates, and particulars as aforesaid being so placed at the disposal of the said intended company by the said parties thereto of the first, second, and third parts respectively, and also in consideration of other services thereafter to be rendered by them respectively to the said company in their several capacities of solicitors, engineer, and secretary, that the said parties thereto of the first part should be appointed joint solicitors of the said company on the said line of railway; the said George Remington should be the engineer; and

the said party thereto of the third part should be the secretary to the said company. And thereupon, the resolution having been entered into, it was declared and agreed by them the said parties thereto of the first, second, and third parts respectively, that no person, who might act as a promoter, member of the provisional committee, or as a provisional, or temporary, or permanent director upon the said railway, should, in consequence thereof, be rendered personally or individually responsible or liable to the said parties thereto of the first, second, or third parts, or either of them, for or in respect of any act, deed, matter, or thing whatsoever at any time theretofore made, done, or committed, for or on account or in respect of the said line of railway called 'The London and Manchester Direct Independent Railway,' by them the said parties thereto of the first, second, and third parts, or either of them, or for or on account of any contract or liabilities which might have been incurred or entered into by them the said parties thereto of the first, second, and third parts, or either of them, to and with any person or persons whomsoever, or for any salary or other payment to be made by them the said parties thereto of the first, second, and third parts, or any of them, or for any service or services at any time thereafter to be rendered or performed by the said parties thereto of the first, second, and third parts, or either of them: it was witnessed, that, in pursuance of the said agreement, and in consideration of the premises, each of them the said parties thereto of the first, second, and third parts, covenanted with and to the parties of the fourth part, for and on behalf of themselves the said parties thereto of the fourth part, and as trustees for and on behalf of themselves and other the person or persons whomsoever, who then was, or thereafter should be or become a promoter or member of the provisional committee or board of directors of the said intended railway, or provisional, or permanent, or other director or directors, shareholder or shareholders, of and in the said intended company, to be called 'The London and Manchester Direct Independent Railway;' that they the said parties thereto of the first, second, and third parts, or either of them, their or either of their executors, administrators, or assigns, shall not at any time thereafter sue out or prosecute any action, suit, or other process of law whatsoever, by virtue or in consequence of the said appointment to act as solicitor, secretary, or engineer, upon or against all or any of the promoters or provisional committee of the said intended railway, or against all or

any of the provisional, or permanent, or other director or directors, shareholder or shareholders therein, or any of them, or their or any of their executors or administrators, or otherwise enforce any right, claim, or remedy which he or they severally or respectively had, or thereafter might have, upon or against all or any of the same several persons, for or in respect of any claim or demand arising out of, or accruing from, any act, deed, matter, or thing, then, or at any future time, made, done, or committed, or to be made, done, or committed by them the said parties thereto of the first, second, and third parts respectively, as such solicitor, secretary, and engineer respectively; but, for greater certainty, I crave leave to refer to the said indenture, when produced." The affidavit concluded with the following passage: —"And I further say, that I verily believe that the said Michael Thomas Bass, in common with all the members of the said committee acting upon the said committee at the time, perfectly well knew, and thoroughly understood, that the said payments of the said sums of 10,000*l.*, 5000*l.*, 5000*l.*, and 5000*l.*, so made to me and my said colleagues, were made bonâ fide, not on account of costs nor in satisfaction of costs, nor subject to taxation of costs, nor subject to the repayment of the surplus, if any, but in excess of costs, (if it should be found that they did exceed fair and liberal costs), as a reasonable and just compensation to me and my said colleagues for services and sacrifices of great importance, ultra what our professional duty required, and for a compensation for the loss of our offices in the manner hereinbefore mentioned, and in which offices we had uniformly conducted ourselves in a manner to entitle us to the highest consideration from the scripholders as well as the committee; and that the said committee and the said petitioner well knew that they could justify such payments, had the said amalgamated company eventually succeeded in obtaining their act; but that, from their failure, from circumstances over which we could have no control, it is now sought to shift such payment to the ground of costs, and, save and except for such collateral purposes as are hereinbefore mentioned, merely to bring it within the taxing jurisdiction of this honourable court."

Knight Bruce, V. C.—Several points have been made and argued in support of this petition, upon which I do not consider it necessary at present to pronounce any opinion. They have, and indeed every part of the case has been, exceedingly well argued by Mr. Daniel.

It appears to me, that there are very special and particular circumstances in this case, and, upon the facts to be collected from the materials before me, I think it, at least, reasonably arguable that the solicitors in this case had a fair ground for claiming, as they appear in fact to have claimed, upon the occasion of discussions that have preceded and accompanied the severance of the connexion between them and the provisional committee, to be entitled in honour, if not in law, and by a moral, if not by a technical equity, to a compensation or pecuniary advantage, independently of their professional demands or their professional remuneration; and that such compensation or advantage thus claimed was agreed to be included in the 28,000*l.* not fraudulently. How this matter, in truth, stands, I give no opinion, beyond saying, that I am not satisfied that the claim was made dishonestly, or colourably, or frivolously. It may have been well or ill founded. It may be, that it ought to be in some mode investigated; it may stand, or it may not abide the test of investigation. There may have been some degree of pressure; but, since the money (paid to the solicitors, as it was, in full of all demands, without a bill, and without any knowledge of the mere amount of costs claimed or due) is not, I think, proved to have been obtained by fraud, and was, as to an undistinguished, unknown, and uncertain portion of it, paid upon a consideration, which I think that I am not, upon this petition, authorised to pronounce dishonest or frivolous, or enabled to estimate, it would, in my judgment, (supposing that I were to order the delivery of a bill of costs, and to direct its taxation, and that this operation should produce an amount short of 28,000*l.*), be impossible for the court upon this particular proceeding to pronounce judicially, without a suit, that the difference ought to be returned. I ought not, therefore, I conceive, to do more upon this petition, now, at least, than to order it to stand over, without prejudice to any suit, and with liberty to institute a suit, and to apply. Whether a suit against the solicitors, if instituted, and being properly framed, would succeed, I have an opinion, which I need not state. It struck me at one time that the Court might, under the present proceeding, lay hold of the written undertaking to deliver a bill of costs; but, worded as that undertaking is, to order upon the ground of it the delivery of a bill for the purpose of taxation against the solicitor, would, I think, be wrong, if not otherwise right. Now, the avowed object of the present petitioner is taxation, in order that

Cases in Equity.

In re Sir George Stephen.

the solicitors may, if overpaid, be compelled to refund. I cannot treat the bill as required for any other purpose than this proceeding. I have assumed, but I wish not to be understood as now deciding, that the petitioner, upon the alleged points of objection to his petition, and which I have not noticed, is right. The order, therefore, will be, that the petition do stand over, without prejudice to any suit, with liberty to institute one, and with liberty generally to apply.

CHAPTER VI.

ON THE DISSOLUTION OF RAILWAY COMPANIES, AND HEREIN ON THE RIGHTS OF ALLOTTEES TO RECOVER THEIR DEPOSITS.

A RAILWAY company, acting under a special act of Parliament, is constituted a body corporate, and can only be dissolved by an act of Parliament, unless, indeed, such a company should fall within the provisions of the stat. 7 & 8 Vict. c. 111, s. 26, which enables her Majesty, in certain cases, to revoke and make void all powers conferred by Parliament on bankrupt companies (*a*).

But the great competition which has prevailed between the promoters of competing lines of railway, has led to the failure of many companies, which, from various causes, have been unsuccessful in obtaining acts of Parliament to enable them to carry their proposed undertakings into effect; and, as the Joint-stock Companies Act, 7 & 8 Vict. c. 110, under which these companies are provisionally registered, does not contain any provisions for dissolving such companies, it has been usual to insert a clause in the subscribers' agreement, authorising the managing directors to dissolve the company, if such a step should become necessary. But many companies having been established and conducted, under circumstances which rendered it a matter of extreme difficulty to wind up their affairs, a statute was passed in the session of Parliament, 1846, for the express purpose of dissolving certain railway companies. It will

(*a*) It is very doubtful whether a railway company is a *commercial* or *trading company* within the meaning of this statute, see note (*a*), post, Appendix, 74. A company within the purview of 9 & 10 Vict. c. 28, may clearly be made bankrupt, post, 674, note (*p*).

Dissolution of Partnerships otherwise than by Statutes.

be seen, however, that this act is only applicable to companies which were in existence at the time of the passing of the act; and it is therefore necessary, before we proceed to detail the provisions of the statute, to make a few observations on the state of the law, as it respects the dissolution of partnerships generally; and the result appears to be, that, unless at some future time the provisions of the before-mentioned statute are extended, so as to embrace all railway companies not incorporated by act of Parliament, considerable difficulties will occur in winding up the affairs of unsuccessful companies.

The usual mode of dissolving a partnership, in the absence of an agreement in the deed of partnership, is by applying to a court of equity; but it being a well-established rule in courts of equity, that, if a suit be instituted, seeking to wind up the affairs of a partnership, all persons interested must be made parties, however numerous they may be, it is almost impossible to dissolve a railway company by making an application to a court of equity. In *Deeks* v. *Stanhope* (*b*), one of the latest cases on the subject, Sir L. Shadwell, V. C. of England, lays down the rule above referred to, in the following language: "The difficulty in this case is, that the objection to the bill is made by some of the partners themselves; because it prays a dissolution of the partnership, without bringing all the parties before the Court. Now, there is a train of decisions which have held, that, where a bill is filed for the dissolution of a partnership, that cannot be effected unless you have all the parties interested before the Court. The case of *Evans* v. *Stokes* (*c*) was decided six years after the case of *Long* v. *Yonge* (*d*), and Lord Lang-

(*b*) 14 Sim. 66. See the authorities on this subject collected and commented upon in Bisset on Partnership, 325.

(*c*) 1 Keen, 24.

(*d*) 2 Sim. 369.

Dissolution of Partnerships otherwise than by Statute.

dale there says, 'It is perfectly obvious that a suit, where all the accounts of the partnership are to be taken, and the rights of all the partners are to be determined, as between themselves, and under the various circumstances in which they stand in relation to each other (some of them, for instance, having paid their calls, and others having omitted to do so), cannot be prosecuted in the absence of any of those partners.' Then, after that, you have the commentary of Lord Cottenham, in *Wallworth* v. *Holt* (*e*); and Lord Cottenham, as I collect from what he said in that case, would, if the case before him had been different from what it was, have done that which he seemed very much inclined to do. But it must be observed, that, in the case of *Wallworth* v. *Holt*, the bill did not pray for a dissolution of the partnership. There being then an uniform series of decisions in support of the objection, I feel myself bound to allow it; for I have no authority whatever to alter the law established by a course of decisions."

It therefore appears to be quite clear, that if parties seek to dissolve an extensive company, by means of an application to equity, it would be utterly impossible to keep the record in such a complete state, with respect to parties, as would enable the plaintiffs to bring on their case for hearing; and the consequence is, that it has become the practice for persons connected with such companies, who apply to equity for relief, to confine the bill to the prayer that the account between the parties may be taken, without proceeding to pray for a dissolution of the company,—it having been decided that a bill of this description may be sustained by some of the partners, on behalf of themselves and others (*f*).

(*e*) 4 Myl. & Cr. 619.

(*f*) See *Wallworth* v. *Holt*, 4 Myl. & Cr. 619; *Richardson* v. *Hastings*, 7 Beav. 301; *Deeks* v. *Stanhope*, 14 Sim. 57; Bisset on Partnership, 338, also ante, 117. As *Wyld* v. *Hopkins*, 10 Jurist, 1000, post, 700, has decided, that no partnership or

Dissolution of Partnerships otherwise than by Statute.

Such being the difficulties attending an application for a dissolution to a court of equity, it is apparent how necessary a precaution it is, to insert a clause in the subscribers' contract which will authorise the managing directors to dissolve the company, if such a proceeding becomes necessary. It is not to be supposed that the insertion of such a clause will obviate all difficulties, if it should become necessary to dissolve the company; because it is now become a common practice, for parties who sign the subscribers' and parliamentary contracts, to dispose of the scrip in the market, and the purchasers seldom or never sign the subscribers' contract. And therefore, (and for other reasons which need not be here enumerated), the interference of the Legislature seems to be required for the purpose of enabling the promoters of an unsuccessful project to wind up their affairs in a summary manner; and the experience afforded by the working of the act of the last session of Parliament (9 & 10 Vict. c. 28) will probably suggest some judicious alterations, which may be incorporated in an act which should include all railway companies not incorporated by act of Parliament (*g*).

The statute above referred to is intituled "An Act to facilitate the Dissolution of certain Railway Companies," and it provides, that the parties interested may either *dissolve* the company simply, or cause a fiat in bankruptcy to be issued. It also contains a very important provision, inserted for the purpose of enabling members of provisional committees to sue their fellows, for contribution, by an action at law; and this clause appears to affect, in a very important manner, the interests of all provisional committee-men who have not paid any part of the debts due from companies, which

quasi partnership exists in certain cases, quære, whether a suit to dissolve such company will now be held to be within the rules above laid down.

(*g*) See note (*m*), post, 674.

may avail themselves of the statute. Bills of costs claimed by attornies or solicitors, are also made liable to taxation.

Dissolution of Partnerships otherwise than by Statute.

We now proceed to state in some detail, the contents of the statute.

Contents of 9 & 10 Vict. c. 28.

Sect. 1 enacts, that when any persons or companies before the 3rd July, 1846, shall have entered into a subscription contract or other agreement in writing, or otherwise, for the formation of a company or partnership for making any railway, which cannot be carried into execution without obtaining the authority of Parliament, and in respect of which an act shall not have been obtained, the company may be dissolved, whether or not such contract or agreement shall contain any provisions for dissolution; provided, nevertheless, that any provisions for dissolution in the contract or agreement contained, may be exercised at any time before the parties avail themselves of the act; and it is also provided, that the provisions of the act shall apply to any contract or partnership for the making any railway, notwithstanding that the agreement or partnership may relate to any other objects in connexion therewith, and (unless a separate capital and separate subscription shall exist as regards the different objects) then, on a dissolution under the provisions of that act, the dissolution shall extend to the whole objects of the contract or partnership (*j*). It is also enacted, that the act shall be applicable to new undertakings promoted by companies actually incorporated, and seeking to raise a further capital (*k*).

For the purpose of enforcing the provisions of the act, it is enacted, that the committee, provisional directors, or other persons entrusted with the management of the undertaking, may call a meeting of the shareholders in London, or certain

(*j*) 9 & 10 Vict. c. 28, s. 1, post, App., 211.

(*k*) Ibid., s. 30, post, App., 218.

Contents of 9 & 10 Vict. c. 28.

other places specified (*l*), for the purpose of determining whether the company shall be dissolved; and if the meeting determine, as after mentioned, that the company shall be dissolved, then, as from the date of the resolution come to at such meeting, the company shall be taken to be dissolved, and the committee shall not have power to proceed any further with the undertaking (*m*). Any five shareholders may call upon the committee to convene a meeting for the above-mentioned purpose; and if the committee refuse or neglect, for six days after a requisition, to call a meeting, or if, for any reason whatever, such meeting shall not be convened and held, any five shareholders may call a meeting; and, after any such requisition has been left or served, the committee may not make any payments (except such as are excepted), or enter into any contracts, or issue any shares or scrip, until the meeting shall have determined the question of dissolution (*n*). The meeting is to be held duly called, although the votes of the parties calling it are disallowed (*o*); and the statute contains specific directions for giving due notice, by advertisements in the newspapers, of the day, hour, and place of meeting (*p*).

The parties entitled to be present at the meeting are the persons producing the shares, scrip, or receipts thereinafter defined, or their proxies (*q*). Provision is made for the election of a chairman at the meeting, who has a casting vote, and his duties are defined (*r*). Three scrutineers of votes are also to be elected (*s*). In the event of a quorum of shareholders not being present and voting at such meeting, the votes are to be recorded and the meeting adjourned,

(*l*) 9 & 10 Vict. s. 17, c. 28, post, App., 215.
(*m*) Ibid., s. 2, post, App., 212.
(*n*) Ibid., s. 3, post, App., 212.
(*o*) Ibid., s. 4, post, App., 212.
(*p*) Ibid., ss. 5 & 6, post, App., 212, 213.
(*q*) Ibid., s. 6, post, App., 213.
(*r*) Ibid., ss. 7, 8, & 10, post, App., 213.
(*s*) Ibid., s. 9, post, App., 213.

Contents of 9 & 10 Vict. c. 28.

and a notice of the adjournment given: and, at the adjourned meeting, the votes of the persons constituting the same, who had not voted at the original meeting, are to be recorded; and the total amount of votes given at the original and adjourned meeting are to be received, as if given at one and the same meeting (*t*).

The statute then proceeds to point out the parties who are entitled to vote at such meeting by themselves or proxies, *i. e.* all persons who are in possession of and produce certificates or receipts, usually termed "scrip" or "receipts" for deposits on shares, and that notwithstanding the party in possession may not be the party to whom the same were originally granted, or that the same may not have been legally assigned to the party in possession, or be held by him as mortgagee or in any other manner, or that the same may be subject to any charge or lien (*u*). But no person may vote except in respect of scrip, receipts, or shares actually issued or given before the 31st March, 1846 (*v*). Every such shareholder, on the question of dissolution and bankruptcy, is entitled to one vote, by himself or proxy, in respect of every share held by him, and a form of proxy is annexed to the act. A proviso is inserted, that the fact of any party attending any meeting shall not in anywise increase or alter in law or equity his rights and liabilities (*x*). Proxies are to be signed before certain public officers who are particularly specified (*y*).

To constitute a meeting for deciding on a dissolution or bankruptcy, persons representing at least *one-third* part of the shares actually issued or given, either as shares, scrip, or receipts, must be present and vote; and for the purpose

(*t*) 9 & 10 Vict. c. 28, s. 11, post, App., 213.
(*u*) Ibid., s. 12, post, App., 214.
(*v*) Ibid., s. 18, post, App., 215.
(*x*) Ibid., s. 13; post, App., 214; see form of proxy, post, App., 220.
(*y*) Ibid., s. 14, post, App., 214.

Contents of 9 & 10 Vict. c. 28.

of effecting a dissolution, and as to bankruptcy, there must be either a majority of votes of the whole scrip of the company issued as aforesaid, or at least three-fifths of the votes of persons present and voting, either as shareholders or proxies, in favour of the motion for dissolution, and for the bankruptcy if so resolved on (*z*). The shares, scrip, or receipts actually issued or given for the purposes of the act, are to be taken to constitute the whole number of shares in the undertaking, although the contract may have provided that the undertaking should consist of a greater number (*a*). The chairman and scrutineers are required to sign a minute of the proceedings, which is to be advertised in the newspapers, and registered with the registrar of joint-stock companies (*b*). A copy of the London Gazette is made evi-

(*z*) 9 & 10 Vict. c. 28, s. 15, post, App., 215. (*a*) Ibid., s. 18, post, App., 215.

(*b*) The following may be the form of this notice :—

——— *Railway Company.*

At a meeting of the shareholders in this company, called by virtue of An Act to facilitate the Dissolution of certain Railway Companies, 9 & 10 Vict. c. 28, and pursuant to notice duly advertised according to the said act, and held at ——, on —— the ——, 18—, at —— o'clock in the afternoon, A. B., Esq., was duly elected chairman. C. D., Esq., E. F., Esq., and G. H., Esq., three shareholders of the said company, were then selected by the meeting as scrutineers to verify and take the votes of the shareholders entitled to vote under the said act, and to cast up and declare the same.

It was then moved and seconded, that this company be dissolved, and also that such dissolution should not be taken to be an act of bankruptcy.

The chairman put the questions severally from the chair, and the said scrutineers proceeded to take and record the votes thereon, and made the following report :—

We, the undersigned scrutineers, do find, and do hereby certify the same, that the total number of scrip, or receipts for deposits on shares, represented by persons present who have recorded their votes, amounts to 4507 shares, and that the same is more than one-third part of the shares, receipts, or scrip on the said undertaking issued or given before the 31st day of March last. And we do also hereby certify that the following votes were given: For dissolution, 4507; against, none. For such dissolution to be taken as an act of bankruptcy, none; against, 4507. And we do hereby further certify, that, by the above

dence, and parties signing false minutes, or inserting false advertisements, are liable to be prosecuted for a misdemeanour (*c*).

For the purpose of ascertaining the number of shares, scrip, or receipts actually issued or given, the committee (except in regard to Scotch railways) are required, under a penalty, within twelve days after the 3rd July, 1846, to send to the registrar of Joint-stock Companies a return specifying the number of shares, scrip, or receipts actually issued or given, the amount of each share, and of the deposit paid or to be paid thereon (*d*). The committee of Scotch railways are required to send a similar return to the sheriff clerk of the shire of Edinburgh (*e*). The registrar of Joint-stock Companies (*f*), and the sheriff-clerk of Edinburgh (*g*), are required to send certain notices to companies requiring such return to be made; and the returns, when made, may be inspected (*h*). The certificate of the registrar as to the amount of the shares specified in the return is made evidence (*i*). If, by any reason whatever, such return as aforesaid be not made

(*c*) 9 & 10 Vict. c. 28, s. 16, post, App., 215.
(*d*) Ibid., s. 18, post, App., 215.
(*e*) Ibid., s. 20, post, App., 216.
(*f*) Ibid., s. 19, post, App., 216.
(*g*) Ibid., s. 20, post, App., 216.
(*h*) Ibid., ss. 19, 20, 21, post, App. 216.
(*i*) Ibid, s. 19, post, App., 216.

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voting it was decided that this company is dissolved, and that such dissolution shall not be taken to be an act of bankruptcy.

C. D.
E. F. } Scrutineers.
G. H.

On the receipt of the above report, the chairman declared that the resolution for the dissolution of the company, and also the resolution that such dissolution should not be taken to be an act of bankruptcy, were both carried in the affirmative.

A. B., Chairman.

C. D.
E. F. } Scrutineers.
G. H.

Contents of 9 & 10 Vict. c. 28.

within one calendar month after the 3rd July, 1846, a meeting may nevertheless be called and held under the provisions of the act, and may resolve on dissolution or bankruptcy, if persons representing shares equal to at least one-third part of the whole capital of the undertaking are present and vote (*k*).

In addition to the question of dissolution, it is imperative on the meeting to decide whether such dissolution shall or shall not be taken to be an act of bankruptcy; but this provision does not extend to Scotch railways (*l*). In case the meeting shall resolve that the affairs of the company shall not be so wound up, or, in the case of a Scotch railway, if the majority shall decide in favour of a dissolution, then (subject to the powers thereinafter given to petition for a fiat) the affairs of the company are to be wound up like ordinary partnerships (*m*). The dissolution of the company does not alter the rights of creditors, or other persons not shareholders, nor any engagements which the committee may have entered into; and does not affect any suits pending before the passing of the act (*n*). If the question of dissolution be negatived, no new meeting to consider the question of dissolution can be called for six months (*o*).

Any three members of the committee, or any creditor to a sufficient amount, may, within three months after the dissolution of the company, petition for a fiat in bankruptcy (*p*); and in either case, or if it has been resolved that the dissolution shall be an act of bankruptcy, a fiat in bankruptcy may issue, and the company are deemed to be within the provisions of the stat. 7 & 8 Vict. c. 111, for England (*q*),

(*k*) 9 & 10 Vict. c. 28, s. 22, post, App., 217.

(*l*) Ibid., s. 23, post, App., 217.

(*m*) Ibid., s. 24, post, App., 217; see ante, 666; and as to the remedies proposed by a bill introduced into Parliament, but not passed, see Bisset on Partnership, 244.

(*n*) Ibid., s. 25, post, App., 217.

(*o*) Ibid., s. 26, post, App., 217.

(*p*) Ibid., s. 27, post, App., 217.

(*q*) Ibid, s. 28, post, App., 217.

and 8 & 9 Vict. c. 98, for Ireland. Scotch companies are liable to sequestration of their estates (*r*).

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Where the dissolution of a company shall have been resolved under the act, then, if judgment shall have been recovered, or shall afterwards be recovered against any member of the committee, he is entitled at law to a contribution from each of the other members of the committee, of such a share of the whole amount as would have been borne by each respective member upon an equal contribution of all the members of the committee; and he may recover the contributions by actions of debt or on the case against all or any of such other members of such committee, but so that no member shall be liable for more than the share to which he shall respectively be liable to contribute under this provision (*s*).

After the dissolution of a company under the act, no action can be brought for any business done by an attorney or solicitor until one month after a signed bill of costs shall have been delivered; and the committee or official assignee respectively may require the bill to be taxed (*t*).

The rights of allottees to recover their deposits.

We have thus seen how unsuccessful railway companies may be dissolved; and it is now proposed to make a few observations upon the liabilities which are incurred by the promoters of such companies; and, as we shall reserve for a separate chapter, the consideration of the liabilities of promoters or provisional committee-men, to pay the debts of the company, our remarks will be here confined to a few remarks on the rights of allottees or holders of scrip to recover back their deposits.

See 7 & 8 Vict. c. 111, post, App., 74.

(*r*) 9 & 10 Vict. c. 28, s. 29, post, App., 218.

(*s*) Ibid., s. 31, post, App., 218.

(*t*) Ibid., s. 32, post, App., 219.

The rights of Allottees to recover their Deposits.

After a railway company is provisionally registered, it is absolutely necessary to incur expenses to a large amount, for the purpose of applying to Parliament for a special act, —inasmuch as engineers must be employed to make surveys of the proposed line of railway; and plans, sections, and books of reference must be prepared, and notices given, in compliance with the Standing Orders in Parliament. In addition to these and similar expenses, an unsuccessful application for a special act, entails the heavy charges which always accompany a struggle before a committee in Parliament.

If the scheme be ultimately abandoned, it becomes important to consider under what circumstances allottees who have paid for, or agreed to pay for, scrip or shares in the proposed undertaking, are entitled to recover back the amount of their deposits. One main point to be attended to, in considering this subject, is to ascertain the contents of the prospectuses and letters of allotment which were issued by the promoters of the undertaking; because these documents usually form the basis of the contract which is entered into, when the deposits are paid. Thus, if the prospectus announces a capital of 500,000*l.*, divided into 10,000 shares of 50*l.* each, and a party applies for a certain number of shares, and they are allotted to him, and he pays the deposit,—in this case, if the managers of the company, who receive the deposit, proceed with the undertaking and incur expenses, without having allotted the whole number of 10,000 shares, the allottee would be entitled to recover back the whole amount of his deposit. Thus, in the often-cited case of *Nockells* v. *Crosby* (*u*), where a scheme for establishing a tontine was put forth, stating that the money subscribed was to be laid out at interest, and after some subscriptions had been paid to

(*u*) 3 Barn. & Cress. 814.

The rights of Allottees to recover their Deposits.

the directors, in whom the management of the concern was vested, but before any part of the money was laid out at interest, the directors resolved to abandon the project, it was decided that each subscriber might, in an action for money had and received, recover the whole of the money advanced by him, without the deduction of any part towards the payment of the expenses incurred. And in *Pitchford* v. *Davis* (*x*), *Fox* v. *Clifton* (*y*), *Bourne* v. *Freeth* (*z*), and other cases, the principle above laid down was fully recognised; and the same doctrine has been applied to railway companies, in the well-known case of *Walstab* v. *Spottiswoode* (*a*), and in other similar cases. Thus stands the law at present; but the questions decided in *Walstab* v. *Spottiswoode* are of such extreme importance at this time, that it is probable they will undergo further discussion in a Court of Error. Sufficient has been, however, said to shew how important it is that the prospectus and any other documents issued by a railway company should be framed in such terms, as to avoid the serious liabilities which will otherwise be incurred by the original promoters of railway undertakings; because, in almost every case, it is essentially necessary to incur considerable expenses before a scheme can be even proposed to the public, as an eligible investment for capital. Care should also be taken, that the prospectus does not state with more confidence than the facts justify, that the plans are ready to be deposited, and that all notices have been duly given, so as to entitle the

(*x*) 5 M. & W. 2.

(*y*) 6 Bing. 777.

(*z*) 9 Barn. & Cress. 632.

(*a*) See this case fully stated, post, 678. Although in this case no scrip was issued, the doctrine laid down seems to be applicable to cases where scrip has been issued and the subscribers' agreement and parliamentary contract executed,—it being of course assumed, that these documents do not authorise the promoters of the company to proceed, although the whole capital be not subscribed for or allotted.

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parties to apply for, and obtain an act in the *next* session of Parliament; because, if it should turn out that these statements are not correct in fact, it may become a question whether an allottee, or holder of scrip, may not recover his money back, on the ground that there has been a total failure of consideration.

Cases.

In an action against one of the provisional committee of a railway company registered provisionally under the 7 & 8 Vict. c. 110, it appeared that a prospectus had been issued stating that the capital of the company was to be 2,000,000*l.*, to be raised by 80,000 shares of 25*l.* each, with a deposit of 2*l.* 12*s.* 6*d.* on each share. The plaintiff having applied for shares in the company, a letter of allotment for thirty shares was sent to her by the secretary, requiring her to pay the amount of the deposit on them into one of certain specified banks, or that the letter of allotment would be void; but that it, with the banker's receipt for the deposit, would be exchanged for scrip on the allottee presenting them at the company's office, and executing the parliamentary contract and subscribers' agreement. This deposit was accordingly paid; but no more than 70,000 shares were allotted: and the plaintiff on applying for scrip was informed by the secretary that the directors did not mean to issue scrip; and on the plaintiff requiring her deposit back again, she received

Walstab v. *Spottiswoode*, (10 *Jur.* 498, 4 Railway Cases, 321).]—Assumpsit. The first count of the declaration alleged, that, "whereas, heretofore and before the making of the promises hereinafter mentioned, and before the commencement of this suit, to wit, on the 1st October, 1845, the defendant and certain other persons whose names are to the plaintiff unknown, agreed together, to form a certain joint-stock company, called 'The Direct Birmingham, Oxford, Reading, and Brighton Railway Company,' for the purpose of making a certain railway under the powers of an act of Parliament to be applied for in that behalf, the capital of which company was to consist of 2,000,000*l.* in 80,000 shares of 25*l.* each, and to be allotted by the committee of management of the said company to such persons as should apply to them and as they should select for that purpose. And the plaintiff then, to wit, on the day and year aforesaid, at the request of the defendant, applied to the said committee of management for, and then were allotted to her by the said committee, by a certain letter of allotment to her directed and delivered, divers, to wit, thirty of the said shares; and thereupon then, in consideration of the premises, and that the plaintiff at the request of the defendant would, on or before 24th October, in the year of our Lord 1845, pay to one of certain banking companies in the said letter of allotment named, whereof one was a certain banking company called 'The London Joint-stock Bank,' to the account of the said joint-stock railway company, a deposit of 2*l.* 12*s.* 6*d.* in the pound upon each of the said thirty shares, making in the whole the sum of 78*l.* 15*s.*, and would present the said letter of allotment, with a receipt of one of the said banks for the said deposit appended thereto, to the defendant or his agents in that behalf, at the office of the said company, and execute a certain contract relating to the formation of the said company, called the parliamentary contract, and a certain agreement, also relating to the formation of the said company, called the subscribers' agreement, within a certain reason-

able time appointed in that behalf, to wit, on the 27th October, 1845, or within a reasonable time then next following, the said contract and agreement to be prepared by the defendant and ready for execution at such time as aforesaid, the defendant then promised the plaintiff to give her, in exchange for the said letter of allottment and banker's receipt, scrip certificates for the said thirty shares, that is to say, certain certificates in writing, purporting that the holder or holders thereof were entitled to thirty shares in the capital of the said joint-stock railway company, and to be shareholders thereof in respect of such shares. And the plaintiff avers, that she, confiding in the said promise of the defendant, afterwards and within the time limited in that behalf, namely, on the said 24th October, 1845, paid to the said London Joint-stock Bank, on account of the said railway company, the said deposit on each of the said shares, making in the whole the said sum of 78*l.* 15*s.*, and then received from the said bank a receipt for the same appended to the said letter of allotment; and afterwards and within the time appointed in that behalf as aforesaid, and at a proper and reasonable time in that behalf, to wit, on the 27th October, 1845, the plaintiff presented the said letter of allotment with the said banker's receipt appended thereto at the office of the said railway company, to wit, at Moorgate-street, in the city of London, to the defendant, and then was, and always since has been, ready and willing, and then offered to the defendant to deliver to him the said letter of allotment and banker's receipt appended thereto, and to execute the said parliamentary contract and subscribers' agreement, and to receive such scrip certificates as aforesaid in exchange for the said letter of allotment and banker's receipt, and then requested the defendant to exchange the said letter of allotment with the said banker's receipt appended thereto as aforesaid for such scrip certificates as aforesaid; and a reasonable time for the defendant so to do had elapsed long before this suit commenced. Yet the defendant, not regarding his said promise, did not nor would, at the time when he was so requested by the plaintiff so to do, or at any time before or since, exchange the said letter of allotment with the said banker's receipt appended thereto for such scrip certificates as aforesaid, or deliver such scrip certificates as aforesaid to the plaintiff; but then wholly neglected and refused, and still neglects and refuses so to do, and then wholly discharged the plaintiff from executing the said contract or agreement: whereby and by reason of the premises the plaintiff has been greatly damaged, and suffered great loss and

for final answer from one of the provisional committee, not the defendant, that a statement would be made of the concerns of the company and the surplus would be divided:—Held,

First, that, assuming that the scheme for establishing the railway company had proved abortive, the allottee was entitled to recover back her deposit in an action for money had and received.

Secondly, that there was evidence from which a jury might infer that the plan for establishing the company was at an end.

Quære, whether a special count in assumpsit for not delivering scrip could be maintained under these circumstances.

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expense, and has also lost the sum of 20*l.*, which she otherwise would have made and gained, as the profit upon a bargain for the sale of the said thirty scrip certificates which she had before that time, to wit, on the 25th October, 1845, with one J. Harrison." The declaration contained the common counts for money had and received, money paid, money lent, and money due on an account stated. Pleas: first, to the whole declaration, non assumpsit; secondly, to the first count, that the defendant did not with the said other persons agree to form a joint-stock company for the purpose and in the manner in that count alleged, &c.; thirdly, to the same count, that the plaintiff did not present the said letter of allotment with the said banker's receipt appended thereto at the office of the said railway company, and did not offer to the defendant to deliver to him the said letter of allotment with the said banker's receipt appended thereto, to execute the said parliamentary contract and subscribers' agreement, and to receive such scrip certificates as in that count mentioned, in exchange for the said letter of allotment with the said banker's receipt appended thereto &c.; fourthly, to the same count, that a reasonable time for the defendant to exchange the said letter of allotment with the banker's receipt thereto appended had not elapsed at the commencement of this suit &c.; fifthly, to the first count, that the defendant did not discharge the plaintiff from executing the said contract or agreement &c.

At the trial, before Pollock, C. B., it appeared that this action was brought to recover 78*l.* 15*s.* with interest from 24th October, 1845, under the following circumstances:—A joint-stock company had been formed and registered provisionally in the mode pointed out by the 7 & 8 Vict. c. 110, by the name of "The Direct Birmingham, Oxford, Reading, and Brighton Railway Company," of which the defendant was alleged, and after some preliminary proof had been given, was admitted by his counsel, to be one of the provisional committee. The prospectus of this company stated, that its capital would consist of 2,000,000*l.* sterling, to be raised by 80,000 shares of 25*l.*, on each of which a deposit of 2*l.* 12*s.* 6d. was to be immediately payable. Applications were made, it was said, for 400,000 shares, and 70,000 had been allotted; but in consequence, as was supposed, of the panic in the market respecting railway shares, which commenced about the 25th October, 1845, not more than 4000 were taken up by the allottees paying their deposits. In the month of September, 1845, the attention of Mrs. Walstab, the plaintiff, and of her son Mr. Walstab

ng been attracted to this company, they each applied for shares cording to a form furnished in the prospectus. The applica- made by the plaintiff was as follows :—

"FORM OF APPLICATION FOR SHARES.

To the Provisional Committee of the Direct Birmingham, Oxford, Reading, and Brighton Railway Company.

Gentlemen,—I request that you will allot me seventy shares of 25*l.* each in the Direct Birmingham, Oxford, Reading, and Brighton Railway; and I do hereby undertake to accept the same or any less number you may allot me, to pay the deposit of 2*l.* 12*s.* 6*d.* per share thereon, and to sign the parliamentary contract and subscribers' agreement when required.

Dated this 7th day of October, 1845.

Name in full . . .	Elizabeth Walstab.
Residence . . .	45, Cambridge Terrace, Hyde Park.
Business or Profession .	Widow.
Signature . . .	E. Walstab.
Name, Residence and Profession of Referee .	Messrs. P. W. Thomas & Sons, 50, Threadneedle-street."

In answer to this application, the following letter of allotment was on the 18th October sent to the plaintiff by the secretary of the company :—

"LETTER OF ALLOTMENT.—(*Not transferable*).

Direct Birmingham, Oxford, Reading, and Brighton Railway.

Capital £2,000,000, in 80,000 shares of £25 each.

Deposit, 2*l.* 12*s.* 6*d.* — *No. of Letter*, 123. *No. of Shares*, 30.

46, Moorgate-street, London, 18th Oct. 1845.

"Madam,—The committee of management have allotted to you thirty shares in this undertaking; and I am directed to request you will pay the deposit of 2*l.* 12*s.* 6d. per share, amounting to 78*l.* 15*s.* into one of the under-mentioned banks, on or before Friday the 24th day of October, 1845, or this allotment will be null and void. This letter with the banker's receipt appended hereto will be exchanged for scrip, upon your presenting it at the offices of the company and executing the parliamentary contract and subscribers' agreement,

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which will lie at the above offices on and after the 27th October; due notice will be given when the deeds will be sent into the country. I am, Madam,

Your obedient servant,

J. B. RAYNER."

Here followed a list of banks, containing among others the name of the London Joint-stock Bank; into which the plaintiff, on the 24th October, paid the amount of deposit required, and obtained the usual receipt. It appeared by the evidence of Mr. Walstab, who was called as a witness for the plaintiff, that, on the 27th October, 1845, he applied on behalf of his mother at the office of the company, to know when scrip would be issued. The clerk in the office could however give no information on the subject, and desired him to come when the secretary should be there. The next day the witness saw by an advertisement in a newspaper that an extension of time until Nov. 6 for the payment of deposits on shares had been given by the directors of this company; and on Oct. 27th or 28th he wrote a letter *on his own account* to the secretary, complaining of this, and giving notice that he should hold the company liable for any damage that might ensue to him from it. After the extended time had expired, the witness went two or three times to the office of the company, to repeat his former inquiry; and on the 12th November saw the secretary, and producing both the plaintiff's letter of allotment and his own, with the banker's receipts annexed, formally demanded scrip for them. The secretary replied, that the scrip was not ready, but would be so in two or three days. The next day, the witness, accompanied by his broker, made a fresh application at the office of the company, and received for answer from the secretary, that the directors had not yet signed the scrip, but soon would. He then inquired the names of the persons composing the committee of management, to which the secretary replied, The defendant and Mr. John Blunt. Two or three days after this, the witness called again at the office, and was told by the secretary that the directors had come to the resolution not to issue scrip; and on the witness intimating his intention of bringing the case before the Lord Mayor, remarked that that course would be unnecessary, as the committee were men of respectability and would do what was right. On the 27th November, the witness called again with his broker, and saw the secretary and another person, who described himself as Mr. John Blunt, chairman of the provisional com-

mittee of the company. On Mr. Walstab producing the two letters of allotment, and formally applying for scrip in exchange for them, Mr. Blunt said, that the directors had taken counsel's opinion, and had come to a resolution not to issue scrip. The witness then demanded the return of the deposits, but the chairman replied, that that would be impossible, as the greater part of the money had been spent. He added, that in a short time a statement of the affairs of the company would be laid before those who had paid deposits; that the whole would be wound up, and whatever balance might remain should be rateably divided. On receiving this answer the witness went away, and next day instructed his attorney to take legal proceedings, who, after some fruitless applications for payment, commenced this action on the 11th December. It also appeared, from a search at the proper offices, that no plans of the proposed line of railway had been deposited, or the other necessary steps taken to introduce a bill into Parliament. The defendant's counsel did not offer any evidence, but took several objections to the plaintiff's right to recover either on the special count or the count for money had and received. The Lord Chief Baron however thought it better to reserve all the points made, and with this view directed the jury to find for the plaintiff on both those counts, and for the defendant on the rest of the declaration. This they accordingly did, and leave was given to the defendant's counsel to move to enter a nonsuit on either or both those counts, as the Court in banc should determine. The case was argued (May 29th and 30th,) cor. *Pollock*, C. B., *Alderson*, B., *Rolfe*, B., and *Platt*, B., by *Jervis*, Q. C., and *Willes* for the plaintiff; and *Martin*, Q. C., *F. V. Lee* and *Peacock* for the defendant.

Cur. adv. vult.

On this day, (June 12), judgment was delivered by *Pollock*, C. B. —This was an action of assumpsit. The declaration contained a special count founded on an alleged contract to deliver scrip; there was also a count for money had and received. At the trial before me on the 27th February, it appeared that the defendant was a member of the provisional committee of the Direct Birmingham, Oxford, Reading, and Brighton Railway Company, registered provisionally under the 7 & 8 Vict. c. 110. The prospectus announced the capital to be 2,000,000*l.*, in 80,000 shares of 25*l.* each share. The deposit required was stated to be 2*l.* 12*s.* 6*d.* per share. On the 7th October, 1845, the plaintiff applied to the provisional committee for

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shares, according to the form directed by the committee (which form it is not necessary now to state). On the 18th October the plaintiff received a letter of allotment in the following form:—

"LETTER OF ALLOTMENT.—(*Not transferable*).

Direct Birmingham, Oxford, Reading, and Brighton Railway Company.

Deposit, 2*l.* 12*s.* 6*d.* — *No. of Letter*, 128. *No of Shares*, 30.

46, Moorgate-street, London.
18th October, 1845.

"Madam,—The committee of management have allotted to you thirty shares in this undertaking; and I am directed to request you will pay the deposit of 2*l.* 12*s.* 6*d.* per share, amounting to 78*l.* 15*s.*, into one of the under-mentioned banks, on or before Friday, the 24th day of October, 1845, or this allotment will be null and void. This letter with the banker's receipt appended hereto will be exchanged for scrip, on your presenting it at the office of the company and executing the parliamentary contract and subscribers' agreement, which will lie at the above offices on and after the 27th October; and due notice will be given when the deeds will be sent into the country."

This letter was signed by the secretary, and set out the names of several bankers; and the plaintiff in due time paid the deposit on the thirty shares into the London Joint-stock Bank, the bankers of the company, and on the 27th October applied for scrip. The time for delivering scrip was extended by the provisional committee to the 6th November. On the 12th November the plaintiff applied again; and after several other fruitless applications at the office of the company, the plaintiff was told by the secretary that the directors did not mean to issue scrip: and upon the plaintiff requiring her money to be repaid, the final answer given at the office, by one of the provisional committee, *not the defendant*, was, that a statement would be made of the concerns of the company and the surplus would be divided. It was admitted at the trial, that 400,000 shares had been applied for; 70,000 had been allotted; but, about the 25th October, 1845, public confidence in railway schemes having been much shaken, the deposit was paid on 4000 shares only, a number much too small to justify proceeding with the scheme. The plaintiff, failing to get scrip or her money again, brought the present action.

At the trial, it was contended by the defendant's counsel that the defendant was not liable under either of the counts in the declaration,—that the special count could not be supported, and that the defendant was not liable on the count for money had and received. A verdict was found for the plaintiff under my direction, with liberty for the defendant to move to enter a nonsuit if there was no evidence to support the verdict, all the points raised by the defendant's counsel being reserved. Accordingly, Mr. Martin, in Easter Term, obtained a rule, which was argued on the 29th and 30th May last, before me and my Brothers Alderson, Rolfe, and Platt.

For the defendant it was contended, that the contract as laid in the special count was not proved, and that the defendant was under no contract to deliver scrip. But the argument chiefly turned on the count for money had and received; and it was alleged that the subscribers became a *quasi partnership*, and that their subscriptions went into a common fund to be applied for the general benefit, and in consequence that the plaintiff could not sue the defendant at law. A further point made was, that the application being for an allotment of shares, which in fact had been allotted, the plaintiff had really obtained all she asked for, and had no grounds of complaint: and lastly it was said, that there was no evidence of the concern being at an end, as the defendant was not bound by what another member of the committee stated; and unless the concern was abandoned, money had and received would not lie.

For the plaintiff it was argued, that the special count was proved, and that there was evidence that the concern was at an end; and the case of *Nockells* v. *Crosby* (3 B. & C. 814) was cited as an authority.

We do not think it necessary to give any opinion on the special count, as to which some doubt may well be entertained, because we are all of opinion that the plaintiff is entitled to recover on the count for money had and received: and as the plaintiff cannot be entitled in a case like the present to damages on the first count, for not delivering scrip, as upon a contract broken, and also to have her money returned as on a contract rescinded; we are of opinion that the verdict for the plaintiff on the count for money had and received ought to stand, but that the verdict for the plaintiff on the first count should be set aside, and a verdict entered for the defendant.

With respect to the first point made for the defendant, that the subscribers became a quasi partnership, and that their subscriptions became a common fund to be applied for the general benefit, so that

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no one could claim back his subscription: we are of opinion, that such is not the true result of the publication of the prospectus by the provisional committee (of which the defendant was one), of the application for shares, and the allotment, and the payment of the deposit. We think in this case no partnership ever actually commenced. In the case of *Pitchford* v. *Davis* (5 Mee. & W. 2) it was decided, that where a prospectus was issued for a speculation to be carried on by means of a certain capital, a subscriber did not become a partner unless the terms of the prospectus were in that respect fulfilled. And that decision has been since frequently acted on in this and other courts. In the case of *Nockells* v. *Crosby*, cited by the plaintiff's counsel, a similar doctrine was held. It appears to us, that the application for shares and payment of the deposit amounts to nothing, if the shares subscribed for are so few that the concern cannot proceed and the scheme must necessarily be abortive.

With respect to the point that the plaintiff applied for shares and that shares were actually allotted, and therefore no action can be sustained; it is a sufficient answer to say, that the allotment of shares in an abortive scheme, which does not correspond with what the prospectus held out, is really not a compliance with the application. If the scheme has wholly failed and has ceased even as a speculation, nothing whatever has been allotted to the subscriber.

But it was urged, that there was no evidence of the concern being at an end. We think that the answer given at the office by one of the provisional committee, that a statement would be made and the surplus would be divided, was evidence to go to the jury that the concern was abandoned; and unopposed as this was by any evidence on the part of the defendant, we think that the jury were well warranted in finding that the scheme was at an end. If so, we think, on the authority of *Nockells* v. *Crosby*, that the plaintiff is entitled, under the count for money had and received, to recover back her deposit.

A question was raised, though not much argued, whether there was any difference between one portion of the deposit and another. It being, as we think, manifest that the deposit of 2*l.* 12*s.* 6*d.* consisted of 2*s.* 6*d*, being 10*s.* per cent. on the 25*l.* in pursuance of the 23rd clause of the act referred to, and the residue being 10*l.* per cent. required to be depositedby the Standing Orders of Parliament,—we think it is clear, beyond all doubt, that the amount paid, in order to be deposited in pursuance of any Standing Orders, must be returned to the plaintiff. There is no foundation whatever for a claim to retain

this, which was paid for a specific purpose, and the concern abandoned before the money could be applied for that specific purpose. But we think that the *remainder* of the money may be also claimed back; and that the language of Littledale and Holroyd, JJ., in *Nockells* v. *Crosby*, applies to this part of the case. To use the language of Holroyd, J., in that case, "The concern was never really set a going; and the expenses incurred in setting a scheme on foot are not to be paid out of the concern, unless they are adopted when it is in actual operation. All the steps taken were only preparatory to carrying the project into effect; and as it never was carried into effect, the plaintiff was entitled to have back the whole of the money that he advanced."

On these grounds, we think that the verdict ought to be entered for the defendant on the first count, but that the verdict for the plaintiff on the count for money had and received ought to stand. Our judgment therefore must be for the plaintiff.

Jervis.—The verdict for the defendant on the first count should only be on the plea of non assumpsit to that count. The other issues raised on that count are found for the plaintiff, and she is entitled to retain her verdict upon them.

Pollock, C. B.—Yes, that is what we mean.—*Rule absolute to enter the verdict for the defendant on the plea of non assumpsit to the first count, and discharged as to the rest.*

[redacted]

the Company, assisting at meetings, and giving personal directions to forward the progress of the intended scheme. In such cases as these, the liability of the parties to pay all debts incurred was clearly established. In other cases the proof depended upon evidence of a less decided character. In some instances it was only shewn that the defendant had consented to be placed on the Provisional Committee,—sometimes with the additional fact that he had signed a consent to act as a promoter or provisional committee-man for the purposes of registration (a). In other cases evidence was given to shew that the party charged had not only been thus placed on the Committee, but that he had also applied for shares in the undertaking,—had attended meetings,—or expressed an interest in the success of the undertaking. In

(a) See 7 & 8 Vict. c. 110, s. 4, post, Appendix, 40.

Provisional Committee-men are not Partners or quasi Partners.

other cases the mere circumstance that prospectuses circulated with the knowledge of defendants, containing their names as provisional directors or committee-men, formed the principal ground on which the liability of the defendants rested. Other cases were still more complicated, by reason of the existence of a managing committee, as distinguished from the provisional committee or list of promoters. Much discussion ensued at Nisi Prius as to the proper directions which ought to be given to the jury by the judge, when cases of this description were submitted to them, and many conflicting decisions were arrived at, although the current of the decisions set strongly against the defendants.

It seems, however, now to be established, that the mere agreement to become the promoter or provisional committee-man of a railway company, does not of itself necessarily render the party liable to be sued for the debts incurred in forwarding the progress of the undertaking: inasmuch as no partnership, or quasi partnership, exists in such a case. And it seems further, that the liability or non-liability of promoters or committee-men, must, in all cases, be determined by the ordinary rules of law which affect the relation of principal and agent. This doctrine has been clearly laid down in the late cases of *Reynell* v. *Lewis* and *Wyld* v. *Hopkins*, by the Court of Exchequer (*a*), in a well considered and elaborate judgment. It is unnecessary to say that this is a very important decision; because, if the plaintiffs had succeeded in establishing as a proposition of law, that a party, who consented to become a promoter or

(*a*) See these cases, post, 697. The judgment was delivered on the 25th November, 1846, and since that period bills of exceptions have been tendered at Nisi Prius, to the summing up of several of the judges, in cases where the liabilities of provisional committee-men have been in discussion, with a view to obtain the opinion of a court of error upon this decision. See note (*c*), post, 690.

Pleas in abatement by Provisional Committee-men.

On this subject the statute 3 & 4 Will. 4, c. 42, s. 8, enacts, that no plea in abatement for such non-joinder shall be allowed, "unless it shall be stated in such plea that such person is resident within the jurisdiction of the Court, and unless the place of residence of such person shall be stated with convenient certainty, and an affidavit verifying such plea;" and, by section 10 of the same statute, it is enacted, "that in all cases in which after such plea in abatement the plaintiff shall, without having proceeded to trial upon an issue thereon, commence another action against the defendant or defendants, in the action in which such plea in abatement shall have been pleaded, and the person or persons named in such plea in abatement as joint contractors, if it shall appear by the pleadings in such subsequent action, or on the evidence at the trial thereof, that all the original defendants are liable, but that one or more of the persons named in such plea in abatement, or any subsequent plea in abatement, are not liable as a contracting party or parties, the plaintiff shall nevertheless be entitled to judgment, or to a verdict and judgment, as the case may be, against the other defendant or defendants who shall appear to be liable; and every defendant who is not so liable shall have judgment, and shall be entitled to his costs as against the plaintiff, who shall be allowed the same, as costs in the cause, against the defendant or defendants who shall have so pleaded in abatement the non-joinder of such person: provided that any such defendant, who shall have so pleaded in abatement, shall be at liberty on the trial to adduce evidence of the liability of the defendants named by him in such plea in abatement."

In many cases it is however extremely difficult for a defendant to avail himself of this plea, however unreasonable it may seem to be, that he should be singled out and made liable to pay a large demand incurred by a railway

company. In the first place, the defendant must shew in the plea the names of all the persons with whom he was joined as a co-contractor(*g*): and, therefore, if the co-contractors are very numerous, it is difficult to comply with the requisitions of the statute. So, if any one of them has left this country, the plea of abatement cannot state, in compliance with sect. 8 of the statute, that he is resident within the jurisdiction of the Court (*h*).

Pleas in abatement by Provisional Committee-men.

In *Henry* v. *Goldney*, where separate actions were brought for the same demand against two several defendants, it was decided that one defendant cannot plead the existence of the other suit in abatement of the action (*i*), *Pollock*, C. B., observes, "Before the statute 3 & 4 Will. 4, c. 42, the defendant could have pleaded in abatement the liability of other parties, and if an action had been brought against all, he could have pleaded the pendency of another suit. Then came the statute with the clause as to the jurisdiction of the Court; and it is argued, that we ought to mould the rules of pleading to prevent injustice, or to infer that the plea now in question could have been pleaded before the statute. But we cannot adopt that argument, or alter the rules of pleading, merely because the effect of that statute is in many cases to take away the application of a plea in abatement. In truth, the act was passed without reference to the rules of pleading; and when one contracting party is out of the realm, its effect may be to make contracts joint and several, which at first were joint only. All injustice, however, may be prevented by an appeal to the equitable jurisdiction of this Court. And it is satis-

Several actions brought for one demand.

(*g*) *Allen* v. *Book*, 1 Car. & K. 571.

(*h*) But on this point it has been lately determined that the word "residence," used in sect. 8, means "the domicile or home" of the party, and therefore an affidavit which described the party as resident at a certain place where he had a furnished house (which was advertised to be let), was held a sufficient compliance with the statute, although the party was not then to be found there, but had gone abroad for a short time: *Lamb* v. *Smyth*, 3 Dow. & L. 712; 4 Railway Cases, 305.

(*i*) 15 Law J., N. S., 298, Exch.

Several Actions brought for one Demand.

factory to know, that in this case there is an appeal to a court of error, in which our decision, if erroneous, may be overruled."

In *Giles* v. *Tooth* (*i*), a further attempt was made to relieve provisional committee-men from a multiplicity of actions. In that case eleven actions were brought against eleven different defendants, who were members of the provisional committee of the Tunbridge and Rye Harbour Railway Company, in each of which actions the plaintiff, as the surveyor of the line, sought to recover the sum of £1560, for his surveying charges from October, 1845, to February, 1846. A rule nisi was obtained on behalf of the defendants, calling upon the plaintiff to shew cause why all further proceedings in each of the said actions should not be stayed until the Court should otherwise order, except in such one of the said actions as the plaintiff should elect to proceed with. The rule was granted upon affidavits, stating that the debt due to the plaintiff, if at all, was due from the defendants jointly, and not separately; and that each defendant denied his liability, whether the other defendants were liable or not, and that they could not plead their non-joinder in abatement. It also appeared that rules were pending in other courts for staying proceedings in several actions brought against different railway committee-men.

The Court of Common Pleas discharged the rule with costs, and *Wilde*, C. J., said—"The rules which are now pending in the causes in the Courts of Queen's Bench and Exchequer, to which we have been referred, are very different from the present. They are rules for the consolidating of the actions, by which means, if the plaintiff in such actions succeeds in fixing one of the defendants, judgment against the others will follow; and, therefore, whatever may

(*i*) 16 Law J., N. S., 3, C. P.; 10 Jur. 948.

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be the consideration of the Court in those cases (*k*), they can furnish no analogy to the present, in which the rule calls on the plaintiff to shew cause why all further proceedings in each of the actions should not be stayed until this Court shall otherwise order, except such one as the plaintiff shall elect to proceed in. This is, therefore, an application calling on the Court to stay the proceedings in all the actions but one; and the ground on which this is asked for is, that the defendants are placed by these proceedings in peculiar hardship, and also on the ground that the defendants have a circuitous remedy given to them by law; and that, therefore, the Court, in conformity with the principle on which it usually in such cases acts, will grant to the defendants a summary relief. With respect to the argument on the ground of hardship, there is no reason why the Court should take from the plaintiff the legal right which he has, unless it can thereby give him substantially the same benefit; the Court has no authority to relieve the defendants at the expense of the plaintiff. In the first place, have the defendants made out that they have this right to a circuitous remedy, for which they contend? It is said that they had a right to a remedy by plea in abatement of non-joinder, but that they cannot so plead in abatement, and have lost that remedy, because of the nature of the partnership into which they have entered; but this circumstance also shews that the plaintiff cannot join in his action any given number of the members with safety. The plaintiff has a right to sue any one alone of several joint contractors, unless the defendants can give to him that benefit which the law says that the defendants are bound to give him. Why, because the defendants are unable to do that which the statute has

(*k*) In *Newton* v. *Belcher*, 16 Law J., N. S., 37, Q. B., the Court of Queen's Bench followed the above decision in *Giles* v. *Tooth*, and rescinded a judge's order which had been made to stay proceedings in two actions brought against provisional committee-men.

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required of them if they plead in abatement, are we to be called on to give them that relief they cannot get by reason of the statute? The Legislature having said that the defendant is now only to have relief for the non-joinder of other co-contractors upon certain terms, we are asked to continue to give to the defendants the same relief which they might have obtained before the statute. The hardship of which the defendants complain arises from the nature of the association into which they have entered; but this was their own voluntary act, and is, therefore, no reason for depriving the plaintiff of the legal right which he possesses. Then, do the defendants shew that there has been here any abuse of the process of the Court, which, according to the practice of the Court, would be a ground for taking from the plaintiff this right which he possesses? On the contrary, it appears that the plaintiff has done nothing more than what he had a perfect right of doing, and that there has been on his part no such abuse or oppression. What ground, then, is there for interfering? The Court is not to alter the law, to make new rules, because the defendants have placed themselves in a situation which deprives them of the ordinary remedy. It is very difficult, I think, to see what would be the form of any rule by which the defendants could have the relief they seek, which would not operate unjustly to the plaintiff, or give rise to numerous difficulties. Terms have been offered by the defendants' counsel in the course of the argument, which, if they had given to the plaintiff all that he was entitled by legal remedy to obtain, and the plaintiff had refused them, this Court would have considered the course of the plaintiff as oppressive. But though the terms offered contain much that is fair, the Court does not feel that they come up to the point the plaintiff is legally entitled to. The case is one which is attended with considerable difficulty, but I do not think that it is one in which the Court has power to relieve the de-

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fendants; and, if the law requires altering, resort must be had to the Legislature. Although I was desirous, if possible, of finding some mode of granting relief to the defendant, I do not see any way by which a remedy can be given by the Court, and am therefore of opinion, that the present rule must be discharged."

Actions by engineers, &c.

In connection with the subject of this chapter, it may here be remarked, that in actions brought by railway engineers to recover their charges, the courts will not compel the plaintiffs to give minute particulars of their demands in the bill of particulars (*l*). Also, that where an action was brought by a provisional committee against the defendants, who were engineers to a railway company, for a breach of contract in not completing the plans in due time, one of the provisional committee released the defendants, and the release was pleaded puis darrein continuance, whereupon, the record having been withdrawn, the Court of Exchequer refused to set aside the plea, the plaintiffs not being able to establish fraud, and it appearing that the releasor had some interest in the action (*m*).

Reynell v. *Lewis*, (10 *Jurist*, 1097; 4 *Railway Cas.* 351).]—Debt. The first count of the declaration alleged that the defendant was indebted to the plaintiff &c. for and in respect of the plaintiff having, and who had for the defendant and at his request, caused divers advertisements, statements, and matters to be inserted and published in divers newspapers and other publications, and which were accordingly inserted and published therein; and also for work and labour, care, diligence, and attendances by the plaintiff, at the defendant's request, done, performed, and given in and about the inserting and causing to be inserted in divers newspapers and other publications, of divers advertisements, statements and paragraphs for the defendant, and for commission and reward, due and of right payable from the defendant to

The relation of co-provisional committee-men of a railway company for the construction of which no act of Parliament has been obtained, is not a co-partnership; nor does it constitute a quasi copartnership, so as to render one of them an agent for the rest for the purposes of the preliminary proceedings necessary to enable them to obtain an act; and therefore,

Where a party is sued as member of the provisional committee of such a company, for goods supplied to the use of the company, the law will not, from the mere fact of his

(*l*) See *Higgins* v. *Ede*, 15 M. & W. 76; *S. C.*, 3 Dowl. & L. 470: *Ronnie* v. *Beresford*, 15 M. & W. 78; *S. C.*, 3 Dowl. & L. 464.

(*m*) *Rawstorne* v. *Gandell*, 15 M. & W. 304: 4 Railway Cases, 295; 3 Dowl. & L. 682.

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having consented to become such provisional committee-man, imply an authority given by the defendant to every other committee-man to give the order out of which the contract arose: and this holds, even though no money be supplied for the expenses of the scheme. In such cases, it must be shewn that the contract sued on was made by the defendant either personally or by an agent duly constituted for the purpose of making it; and the jury, in determining this question, are, with due assistance from the judge, to apply the legal principles affecting the relation of principal and agent.

The agreement to become a provisional committee-man of a railway company, means an agreement to act on the provisional committee, in carrying into effect the preliminary arrangements for petitioning Parliament for a bill for the railway, and so promote the scheme.

Where the defendant in such a case has not only consented to become provisional committee-man, but has authorised his name to be inserted in a particular prospectus of the company, and that prospectus has been so publicly circulated, with his consent, that a jury would presume that the plaintiff knew of it, or if the plaintiff has had it shewn to him at or before the time of making the contract, and has in either case acted upon it in making

the plaintiff in respect thereof. There were also counts for money paid and on an account stated. To this declaration the defendant pleaded the general issue and payment. At the trial, before *Pollock*, C. B., it appeared that the plaintiff was an advertising agent, who sued the defendant as one of the provisional committee of a company called "The Central Kent Railway Company," for money advanced and commission in respect of advertisements of that company, which had been inserted in various newspapers from the 30th September to the 29th November, 1845; some of which advertisements were necessary in order to enable the Company to apply to Parliament for an act of incorporation. The promoter of the company was a person of the name of Ord, and it was provisionally registered in the beginning of October, 1845; when a prospectus was issued, in which, as well as in several others which appeared subsequently, the defendant was described as one of the provisional committee of the company, and Messrs. Parkes, Smith & Co. of 12, Bedford-row, were stated to be the solicitors to it; but no mention was made of any parliamentary agent. The orders for the work which formed the subject of the present action were given to the plaintiff by Parkes, Smith & Co., but for some which were previous to the 26th September the plaintiff did not seek to recover. It was said, that a managing committee had been appointed, but there was no proof that they had ever met or taken an active part in the concern, and the scheme appears to have died away by degrees about the beginning of 1846. The evidence more immediately affecting the defendant was, that he had, on the 26th September, 1845, called at the office of Messrs. Parkes, Smith & Co. in Bedford-row, to request that his name might be put down in the list of the provisional committee of the company; that he had on several occasions afterwards gone to the offices of the company in Mansion-House-place, which were distinguished by a plate on the door, stating them to be the offices of that company, and there conversed with the secretary and solicitors about its affairs and prospects. On one occasion in particular, he complained that his name had been inaccurately inserted in the prospectus, and on others discussed the propriety of allotting shares to certain parties. The secretary to the company, who was examined as a witness, stated that he had shewn the defendant the different prospectuses, as they appeared from timo to time when any alterations were made; and also that, towards the latter end of December, the defendant came to inquire respecting the expenses incurred by the company; and on being made acquainted with the amount, expressed his satisfaction that they were

so moderate. In addition to this evidence, it appeared that a circular, of which the following is is a copy, had been sent to each of the members of the provisional committee.

" Central Kent Railway Company.

" 4, Mansion-House-place,

London, Oct. 15, 1845.

" Sir,—I am directed to inform you, that, at a meeting of the provisional committee of the above undertaking, held at these offices on the 13th instant, it was proposed and agreed upon that 150 shares or any smaller number be allotted to each member of the provisional committee. Will you, at your earliest convenience, let me know what number of shares you wish to have placed at your disposal. The applications for shares are so numerous that I am directed to give notice that no applications will be received after Friday next the 17th instant. I have the honor, &c.,

" C. P. HACKETT, Secretary."

To that circular the defendant returned this answer:

" 17, St. James'-place, Piccadilly,

16th October, 1845.

" Sir,—I will thank you to inform the provisional committee that I will take the 150 shares in the Central Kent Railway agreeable to their circular of the 15th instant.

" Please to address me as above for the present.

" I am, Sir, &c.,

" K. LEWIS.

" C. P. Hackett, Esq., Secretary."

The following advertisement was also shewn to have been sent by the defendant to The Times newspaper, in which it appeared on the day after it bears date.

" To the Editor of The Times.

" Sir,—As I understand that my name has been placed on the committees of three or four other railways, without my consent or authority, I consider it due to the public as well as to myself to state, that I have not the honour to be on the committees of any lines save the Central Kent and Middlesex and Surrey Railways.

I am, Sir, your obedient servant,

18, Stratford-place, " K. LEWIS.

London, Nov. 6, 1845."

At the conclusion of the plaintiff's case, *Jervis*, for the defendant, contended that the question for the jury was, with whom was the

the contract, the question of the defendant's liability will depend on the contents of the prospectus, and the inference which a reasonable man ought to draw from them.

If the prospectus merely state the names of the provisional committee, and no light can be derived from the context, it does not alter the defendant's liability.

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plaintiff's contract for the expenses of advertising this company made. *Pollock*, C. B., on summing up, told the jury, that the question for them was, whether the defendant by becoming member of this provisional committee authorised the attorney, the secretary, or any one else, to hold him out to the world as responsible for the ordinary and necessary expenses, to be incurred previous to the formation of the company. It had been suggested that the question ought to be with whom was the contract made; but that was not in his opinion the most convenient mode of considering the case, for the contract might have been made by a person as agent of another who was the real principal and party liable. The points for their consideration therefore were, first, did the defendant authorise his name to be held out for all reasonable and necessary expenses incurred on behalf of the projected company? secondly, was his name so held out accordingly? and thirdly, did the plaintiff give the credit on the faith of that name? If they were satisfied on those three points, the plaintiff was entitled to their verdict. The jury having found for the plaintiff, the Attorney-General, on the 4th November in this term, obtained a rule for a new trial on the grounds of misdirection and that there was no evidence against the defendant to go to the jury.

This case was argued, Nov. 20 and 21, by *Knowles*, Q. C., *Crompton* and *Willes*, for the plaintiff; and Sir *J. Jervis*, A. G., and *Cowling*, for the defendant.

Cur. adv. vult.

Wyld v. *Hopkins*, (10 *Jur.* 1100; 4 *Railway Cas.* 359).]—This was an action of assumpsit for goods sold and delivered, goods sold, work, labour, and materials, and on an account stated. The defendant pleaded non assumpsit and payment. At the trial, before *Pollock*, C. B., it appeared that the action was brought to recover the balance of an account against a company called The Peterborough and Nottingham Junction Railway Company, and the plaintiff's claim was founded on work done in engraving and printing certain maps, plans, &c., of the projected line of railway. The company in question was registered provisionally on the 4th September, 1845, with the name of Peter Edlin as "promoter;" and on the 29th of the same month a prospectus of the company was registered, in which the defendant was stated to be one of the provisional committee. No meeting of the provisional committee of this company ever took place, and in the first week of October, 1845, a managing committee of which the defendant was not one, was appointed, and held several meetings; but there was no evidence of any prospectus containing the

names of the managing committee having been registered or circulated. The order for the work which the plaintiff had done for the company was given to him by Mr. Gridley, of the firm of Walker and Gridley, who were the solicitors to the company, and it appeared that Gridley had, either at or previous to the time of giving the order, shewn to the plaintiff the prospectus of the company. That document stated (inter alia) the name and objects of the company, the names of the provisional committee including that of the defendant, and also gave the names of the standing counsel, solicitors, bankers, and engineers to the company. No parliamentary agent was mentioned. The prospectus proceeded to say "that the provisional committee had much pleasure in stating that the encouragement and support which they had received from those parties, who from local residence and an intimate knowledge of the resources of the country were best able to form a judgment of the merits of the proposed line, were such as to induce them to apply with confidence to Parliament in the then ensuing session for an act to incorporate the company. That the company's acting engineer had carefully surveyed the line, and his report was very satisfactory as to the facilities which the country offered for the construction of the proposed railway. That the committee reserved to themselves the power of making such alterations in the line, of increrising the capital, and of entering into such arrangements with the companies of connecting railways, as might be deemed advisable. And lastly, that applicants for shares not locally interested, or not known to a member of the committee, must give reference to some respectable broker, banker, or solicitor." In order to show the defendant's liability, and especially that his name had been put down in the list of the provisional committee with his consent, three documents in the defendant's handwriting were put in evidence, the first of which was the following letter:—

"25, Bedford-square, 27th Sept., 1845.

"My dear Sir,—I find you have my name in the list of your committee as director of the Staffordshire Potteries, and Manchester Direct. I am upon the provisional committee of the former, but the directors are not yet chosen. With the latter I have nothing whatever to do. You may if you like dub me director of the ———, as you please. At any rate oblige me by having the former rectified.

"Yours very truly,

"J. D. Hopkins.

"P. H. Edlin, Esq."

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The next, which was dated the 9th October, 1845, was from a person who requested to be allotted 100 shares in the company, and gave as his reference, "J. D. Hopkins, Esq., 25, Bedford-square, London, a member of the provisional committee." At the foot of this document the defendant had written "Highly respectable and responsible, for the whole number applied for. J. D. Hopkins, M. P. C."

The third was the following letter from the defendant in answer to a communication from the solicitors to the company, in which they informed him that the managing directors had resolved to give to each member of the provisional committee the option of taking 100 or any less number of shares in the undertaking:—

"25, Bedford-square, 10th Oct., 1845.

"Gentlemen,—Have the kindness to allot me the full number (100 shares) allowed the provisional committee.

"Your obedient servant,

"J. D. HOPKINS.

"Messrs. Walker & Gridley."

The speculation for constructing "The Peterborough and Nottingham Junction Railway" appears to have proved unsuccessful, but the company had not been dissolved up to the time of the trial of this cause. The Lord Chief Baron, in summing up, told the jury that the question was, whether a person, who allows his name to be put down as member of the provisional committee of a company like the present, must not be understood as authorising his credit to be pledged for the reasonable expenses of the company. Where a *managing* committee of such a company has been appointed and registered, it might be a question whether they did not supersede the provisional committee so far as related to the immediate conduct of the concern, leaving however unaffected the liability of the latter for its expenses; but in the present case, as no managing committee had been registered, that question could not arise. He then left four questions to the jury; first, did they believe that the defendant authorised his name to be used as a member of the provisional committee of this company? secondly, did he intend to authorise his credit to be pledged for the reasonable expenses of the company? thirdly, was the work done? fourthly, was it done on the credit of the defendant's name? The jury found for the plaintiff. This case was argued Nov. 21st and

23rd, by *Martin*, Q. C., and *Willes*, for the plaintiff, and by *Watson*, Q. C., for the defendant.

Cur. adv. vult.

The judgment of the Court, consisting of Pollock, C. B., Parke, Alderson, and Rolfe, BB., was now delivered by

Pollock, C. B.—We have considered the two cases which were argued before us, that of *Reynell* v. *Lewis* and of *Wyld* v. *Hopkins*, and give our judgment in those only; but we think it right to state fully the principles on which our judgment proceeds.

The question in all cases in which the plaintiff seeks to fix the defendant with liability upon a contract express or implied, is, whether such contract was made by the defendant, by himself or his agent, with the plaintiff or his agent: and this is a question of fact for the decision of the jury upon the evidence before them.

The plaintiff, on whom the burden of proof lies in all these cases, must, in order to recover against the defendant, shew that he (defendant) contracted expressly, or impliedly: expressly by making a contract with the plaintiff, impliedly by giving an order to him under such circumstances as shew that it was not to be gratuitously executed—and if the contract was not made by the defendant personally, it must be proved that it was made by an agent of the defendant, properly authorised, and that it was made as *his* contract.

In these cases of actions against provisional committee-men of railways, it often happens that the contract is made by a third person: and the point to be decided is, whether that third person was an agent for the defendant for the purpose of making it, and made the contract *as such*.

The agency may be constituted by an express limited authority to make such a contract, or a larger authority to make all falling within the class or description to which it belongs, or a general authority to make any,—or it may be proved by shewing that such a relation existed between the parties as by law would create the authority; as for instance, that of partners by which relation when complete one becomes by law the agent of the other, for all purposes necessary for carrying on their peculiar partnership, whether general or special, or usually belonging to it; or the relation of husband and wife, in which the law under certain circumstances considers the husband to make his wife an agent. In all these cases, if the agent in making the contract acts on that authority, the principal is bound by the contract, and the agent's contract is his contract: but not otherwise.

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This agency may be created by the immediate act of the party: that is, by really giving the authority to the agent; or representing to him that he is to have it, or by constituting that relation to which the law attaches agency; or it may be created by the representation of the defendant to the plaintiff that the party making the contract is the agent of the defendant, or that such relation exists as to constitute him such; and if the plaintiff really makes the contract on the faith of the defendant's representation, the defendant is bound; he is estopped from disputing the truth of it, with respect to that contract; and the representation of an authority is quoad hoc precisely the same as a real authority given by the defendant to the supposed agent.

This representation may be made directly to the plaintiff or made publicly, so that it may be inferred to have reached him, and may be made by words or conduct.

Upon none of these propositions is there, we apprehend, the slightest doubt: and the proper decision of all these questions depends upon the proper application of these principles to the facts of each case, and the jury are to apply the rule with due assistance from the judge.

There are few, if any of these cases, in which it is contended that authority was directly given by the defendant to the party making the contract, to make it for the defendant; rarely has that circumstance been proved by direct testimony—in one it was said that it was to be inferred from a conversation in which the defendant expressed his satisfaction that the expenses were moderate. That was evidence of the fact for the consideration of the jury; entitled to more or less weight according to the other circumstances of the case.

But it is contended, (and that formed the chief part of Mr. *Martin's* argument and a part of that of others) that the relation of co-provisional committee-men constituted an association, or a quasi co-partnership, in which one was agent for the other, for the purposes of all preliminary proceedings necessary to enable them to obtain an act: or that the fact of their being co-promoters of the scheme, coupled with the fact that no money was supplied for the expenses of it, was evidence to go to the jury, that each authorised the other to contract for those purposes, on his behalf and that of the other promoters—it was insisted that where there was no other evidence than the *mere* fact of the defendant having already agreed to be a provisional committee-man, there was a sufficient case, or at least a case for the consideration of the jury to prove an authority given by

the defendant to every other committee-man to give the order out of which the contract arose, by himself, or by the solicitor or secretary, or an authority to such solicitor or secretary to give it on behalf of the committee.

We think that no such consequence follows as matter of law from the *mere* fact of the defendant agreeing to be a provisional committee-man—such an agreement amounts to no more than a promise that he would act with other persons appointed or to be appointed for the purpose of carrying some particular scheme into effect. The term "committee" means an individual, or a body, to whom others have committed or delegated a particular duty, or who have taken on themselves to perform it in the expectation of their acts being confirmed by the body they profess to represent or act for: an agreement to be a committee-man is an agreement to become one of that body. The schemes may be various—to establish an hospital, or place of emigration, to which persons are to subscribe merely from charitable motives; or partly from these motives, partly from others; or a proprietary school, or literary institution, or assembly-room, in which they are to be beneficially interested as shareholders—or to obtain an act for a bridge, drainage, railroad, or canal: but whatever the objects may be, it seems to us to make little or no difference in the position of the person agreeing to act as a committee-man, if the object of some, most, or all, is gain to themselves *individually:* the legal consequence is the same as if the object of the parties were the most charitable and benevolent, though the result may be practically very different, in exciting an improper prejudice in the minds of a jury when the evidence is laid before them for their consideration. Such an intended association constitutes no agreement to share in profit or loss, which is the characteristic of a partnership. It would be absurd to suppose that such a relation could be meant to be created by any of those who consented to act. Could it be imagined that a person would agree to be a partner, not only with those who were then named committee-men, but any that should afterwards be named by themselves, or by the projector of the company; and could those who subsequently agreed to become members suppose that those previously named could ever have so intended? The truth is, the agreement to become a provisional committee-man means neither more nor less than what the words express: viz. an agreement to act on the provisional committee in carrying into effect the preliminary arrangements for petitioning Parliament for a bill, and so to promote

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the scheme. If afterwards the provisional committee-man does act, he is responsible for his acts.

But there are other cases in which the question does not assume so simple a form; and where there is evidence that the defendant has not only consented to be a provisional committee-man, but has authorised his name to be inserted in a prospectus, not generally, but a particular prospectus, in which, in some cases, certain persons are described as the *acting* committee, in others, solicitors are named, or engineers, or a secretary.

If such a prospectus has been so publicly circulated, with the defendant's consent, that the jury would presume the plaintiff knew of it, or if the plaintiff has had it shewn to him, at or before the time of making the contract, and has in either case acted upon it in making the contract, the question is, what inference ought a reasonable man to draw from the contents of that paper? This must of course depend upon the terms of each particular prospectus.

If the prospectus state merely the names of the provisional committee and nothing more, and no light can be derived from the context, that circumstance does not alter the liability of the defendant. If not responsible as being one of that committee in fact, he cannot become so by the representation of the fact.

If it state the names of the *acting* committee also, where that has been appointed, is the meaning, that the *acting* committee is to take the whole management to the exclusion of the provisional committee, their provisional character having ceased, in which case the provisional committee would not be liable? or does it mean that the provisional committee-men have appointed the acting committee or the majority of it, *on their behalf, and as their agents*, in which case they would be liable for the contracts of the acting committee, or the majority, made as such agents?

Again, does it mean, where the solicitor's name is mentioned, that such person would be regularly employed in that character, by those of the committee who acted, or that he was already appointed by *all* whose names are mentioned as their solicitor, to do all solicitor's business on their behalf; and then would arise a further question, what was the business, *at the time of the contract*, usually transacted by solicitors for companies, intending to obtain an act of Parliament, and on behalf of the company—which is a question of fact to be proved by evidence.

The same remark applies to the appointment of secretary.

Applying these observations to the two particular cases before us, we think that in that of *Reynell* v. *Lewis* there was some evidence to go to the jury of the employment of the plaintiff, and that there was no misdirection; but we think that we ought to grant a new trial on payment of costs, in order that it may be submitted to another jury, and fully considered by them upon the principles above laid down. In the other case of *Wyld* v. *Hopkins*, we entertain so much doubt whether there was any evidence at all to go to the jury, that we think there ought to be a new trial generally, without the condition of the payment of costs.—Rules absolute accordingly.

ADDENDA TO THE TREATISE.

[NOTE.—*The same arrangement is observed in the Addenda as in the Text, to the pages of which reference is made.*]

Service of Writ on the Director of a Company completely registered, p. 10.

A WRIT of summons described the defendants as "Pilbrow's Atmospheric Railway and Canal Propulsion Company, now or lately carrying on business in King William-street, in the city of London." The company had been completely registered pursuant to the statute 7 & 8 Vict. c. 110, and No. 6, King William-street, London, was registered as their place of business. They afterwards discharged their secretary and clerks, and gave up their place of business, but no other place of business was taken or registered by them, and there were no means of serving a writ but upon a director. It was decided that the description of the residence of the defendant was uncertain and insufficient under the statute 2 Will. 4, c. 39, and also that the service of the writ upon a director, in the county of Middlesex, was bad, and that the person on whom it was served might avail himself of these grounds for setting it and the service of it aside. *Pilbrow* v. *Pilbrow's Atmospheric Railway and Canal Propulsion Company*, 16 Law J., C. P., 11.

Withdrawal of Money deposited under the Standing Orders in Parliament, p. 105.

Five of the directors of a projected railway company, by petition, prayed the payment out of court of a large sum, standing in their names in the Bank of England, which had been paid in by them, in compliance with the standing orders, to two bankers and two gentlemen (not petitioners). The order was made according to the prayer. *Boston and Sheffield Railway, Ex parte*, 4 Railway Cases, 230.

Extent of Powers of Directors, p. 117.

The directors of the Eastern Counties and Eastern Union Railway Companies having projected a branch from Colchester to Harwich, and the formation of a steam-packet company to trade between Harwich and the northern parts of Europe, a company was provisionally formed, of which directors of the two railway companies were the directors, and it was proposed that the shares should be taken by the proprietors of shares in the railway companies, and that the latter companies should guarantee to the steam-packet company £5 per cent. on their capital, and repayment of all the subscribed capital on dissolution; and an agreement was prepared on this basis, and proposed to be signed, after the sanction of the shareholders of the railway companies should be obtained, at meetings to be held for that purpose. It was decided by Lord Langdale, M. R., that the railway companies had no power to pledge their funds in the manner proposed; and on a bill filed by one of the shareholders of the Eastern Counties Railway Company, on behalf of himself and all the other shareholders, an injunction was granted to restrain the directors of that company from signing the proposed agreement. *Colman* v. *The Eastern Counties Railway Company*, 11 Jur. 4.

The bill stated, that some of the shareholders of the railway company had accepted shares in the projected company. It was decided, that, notwithstanding this allegation, the bill was not improperly filed by the plaintiff on behalf of himself and all the other shareholders. *Ib.*

Sale of Scrip, p. 122.

The plaintiff having on the morning of a certain day agreed to sell railway scrip to the defendant, the defendant in the afternoon of the same day signed the following document with a view to its being shewn to the plaintiff:—"Bought of N. K. (the plaintiff) 50 shares in the H. H. and B. Railway Company, at 10*l.* per share." It was decided that the contract between the parties was contained in this document; that it required an agreement stamp, although signed by the defendant only; and that the sale of railway scrip was not a sale of "goods, wares, or merchandise," within the meaning of the exemption in the Stamp Act, 55 Geo. 3, c. 184, sched. part 1, tit. Agreement. *Knight* v. *Barber*, 16 Law J., Exch., 18.

When a contract is made for the sale of shares or scrip, and nothing is stipulated as to the expense of the conveyance, the cost of the conveyance, including the necessary stamps, falls upon the purchaser: and before such a contract can be enforced, the purchaser must tender a conveyance to the vendor for execution. *Stephens* v. *Medina*, 4 Q. B. 422; *S. C.*, 3 Railway Cases, 454.

A. gave an order to B., a stock-broker, to purchase shares in a foreign railway. There were no shares in the market, and B. bought a letter of allotment, it being the practice of the Stock Exchange at that time to buy and sell letters of allotment, as shares, in that railway. In an action to recover the value of the shares and the broker's commission, it was decided, that the question for the jury to determine was, whether the order to buy had reference to that which alone could be bought in the market at that time, or was an order to buy at a future time, when, by the passing of the foreign act, actual shares would be transferable and purchaseable. *Mitchell* v. *Newhall*, 4 Railway Cases, 300.

The directors of a railway, called "The Kentish Coast Railway Company," having resolved not to issue scrip, some of the members, without their knowledge, issued scrip, signed by the secretary, from the office of the company. This scrip found its way into the share market, and was sold there at a premium. The plaintiff employed his broker to buy him some "Kentish Coast Railway scrip;" and the broker applied to the defendant, who sold him some of the above scrip. In an action to recover the price paid to the defendant, as having sold a spurious article, it was decided that the question for the jury was, whether the plaintiff intended to buy, and the defendant to sell, that which was current in the market as Kentish Coast Railway scrip, or the real scrip of that company. *Lamert* v. *Heath*, 4 Railway Cases, 302.

Legatee of Shares—Rights of, p. 128.

A testator, who, at the time of his death, was possessed of fifty original and seventy purchased shares in a railway, in respect of which all the calls had not been made, by his will gave thirty whole shares in the said railway to trustees for the benefit of a married woman for life, without power of anticipation, and thirty shares to B.; and he

declared that the legacies should not be held to be specific, so as to be capable of ademption. By a resolution of the railway company, new quarter shares were raised and offered rateably to the registered proprietors. Sixty new shares were offered to, and accepted by, the executors, and the deposit thereon was paid by them. It was decided that the bequests were specific, and that the income of the shares from the time of the testator's death belonged to the legatees. That the legatees were entitled to so many of the new shares as had been alloted in respect of the whole shares bequeathed to them, subject to the payment of the future calls. That the testator's estate was not liable to pay the calls on the whole shares purchased by the testator. That, where a testator dies possessed of several articles of the same nature, the legatee of some of them has the power of selecting, and not the executors of appropriating, those which he shall take. *Jacques* v. *Chambers*, 4 Railway Cases, 205.

Whether testator's estate is liable for future calls on the shares originally subscribed for—quære. *Ib.*

Infants—Powers of Company to take Lands belonging to, p. 147.

The guardian of an infant plaintiff, whose lands were intersected by railways and waggon-ways, from which he received a considerable rental, applied to certain companies to insert in the bills they were applying for in Parliament a clause to the effect, that, in case of their taking any part of plaintiff's land, they would compensate him for the loss or diminution in profit, consequent on the traffic being transferred from the plaintiff's railways and waggon-ways to those of the company. The company having neglected to comply with this application, the plaintiff, by his guardian, presented a petition (in accordance with the finding of the Master), praying that he might be allowed to oppose the bill in Parliament, unless the insertion of such a clause as had been proposed to the company, or some other arrangement to be sanctioned by the Master, should be agreed upon by them. The order was made as prayed. ***Monypenny* v. *Monypenny***, 4 Railway Cases, 226.

Money invested for Lands taken from Parties under Disability, p. 328.

A rector, seised in right of his office, of certain houses taken by a railway company under the powers of their act, applied by petition for the investment of a sum of money which had been paid by the railway company for compensation, and for the reversion, and

thereby prayed for payments of the dividends to the petitioner and his successors. It appearing that the houses in question were subject to leases, of which about thirty years were unexpired, at a nominal rent, the Court refused to make the order as prayed, but directed the investment and accumulation of the sum, with liberty to apply. *Lambeth, Rector of, Ex parte*, 4 Railway Cases, 231.

Costs incurred in investing Purchase-money, p. 331.

Where purchase-money of land taken by a railway company is in court, to be invested in the purchase of other land, the Court will allow all costs, charges, and expenses, according to the act, of as many investments as may be necessary to consume the whole purchase-money. *London and Birmingham Railway Co., In re*, 4 Railway Cases, 229.

Bye-Laws—Legality of, p. 431.

The London and Croydon Railway Company had power under their act of Parliament, 5 Will. 4, c. 13, to make bye-laws for the good government of the affairs of the company; and by one of the bye-laws every passenger not producing or delivering up his ticket was required to pay the fare from the place from whence the train originally started. The plaintiff lost his ticket and offered to pay the fare from the place from whence he had come, but the servants of the company demanded the full fare under the bye-law, and on the plaintiff's refusal to pay it he was taken into custody; but the Court of Exchequer decided that the defendants were not justified in taking the plaintiff into custody, and that an action of trespass was maintainable. *Chilton* v. *The London and Croydon Railway Company*, 8 Law Times, 366.

Rateability of Railways, p. 483.

A Canal Act, 34 Geo. 3, c. 24, s. 19, provided that the company should be rated to all parliamentary and parochial taxes and assessments for their lands, &c., in the same proportion as other lands, &c., lying near the same, are or shall be rated, and as the same lands, &c. would be rateable in case the same were the property of individuals in their natural capacity. By the 54 Geo. 3, c. 103, for making a fair and equal rate for the county in which the canal was situate, it was provided, sect. 4, that the assessment should be made rateably according to the annual rent or value of all estates within every

parish. By the 55 Geo. 3, c. 51, for the more easy assessing, collecting, and levying county rates, it is enacted, s. 1, that the sessions may order a fair and equal county rate to be made, and for that purpose to assess every parish, according to a certain rate of the full and fair annual value of the messuages, lands, tenements, and hereditaments rateable to the relief of the poor therein, any law or statute to the contrary notwithstanding. It was decided, that the county rate was a parochial tax within the meaning of the first act, and that that act was not repealed by either of the later acts, and therefore that the property of the Canal Company was not liable to be rated at the increased value caused by their occupation of it. *Reg.* v. *The Inhabitants of Aylesbury*, 4 Railway Cases, 314.

Injunction, p. 549.

A railway company entered upon land, and drew a trig-line along it, without the consent of, and without having given any notice to the owner, whereupon he filed his bill, and applied for an injunction. The company having stated that they entered upon the land solely for the purpose of making a survey, and that they did not intend to proceed any further without giving the requisite notices, the Court refused to make any order on the motion, but reserved the costs. *Fooks* v. *The Wilts, Somerset, and Weymouth Railway Company*, 4 Railway Cases, 210.

Liabilities of Provisional Committee-men, p. 690.

A railway company having been formed, the secretary wrote to the defendant, inviting him to be a member of the provisional committee, to which he wrote a letter of assent. His name was then published as one of the provisional committee, and he afterwards presided at a meeting of that committee. An action having been brought against him for the price of stationery supplied by order of the secretary; it was decided that the proper question for the jury was, whether the defendant, by assenting to join the provisional committee, had authorised the pledging of his credit for such things as were necessary for the use of that committee; and, therefore, that the jury were right in finding that he was liable for the stationery supplied after such consent. *Barnett* v. *Lambert*, 4 Railway Cases, 308.

Quære, whether, on a division of the committee, an action can be maintained against one of the minority for goods supplied by the order of the majority. *Ib.*

Compensation Cases, p. 223.

By sect. 117 of 7 & 8 Vict. c. ciii, the jury summoned to award compensation for the loss of property taken by the company shall deliver their verdict for the money to be paid for the purchase of the lands required for the works, and for the money to be paid for the injury done to the lands of the party by the severance of such lands, and for the money to be paid by way of compensation for the damage occasioned to such lands by the execution of the works, whether it be for damage sustained before the inquiry or for future damage, either temporary or permanent:—Held, that it was competent for the jury to award compensation for the damage "which the party will sustain by reason of his having to give up his premises as a brewer, until he can obtain suitable premises in which to carry on his business."

Regina v. *The Hull Dock Company*, (11 *Jurist*, 15, *June* 27, 1846).]—Rule calling upon William Jubb to shew cause why a writ of certiorari should not issue, directed to the clerk of the peace of the borough of Kingston-upon-Hull, to remove into this court an inquisition, held and taken by and before the coroner of the town of Kingston-upon-Hull, and county of the same town, under the provisions of stat. 7 & 8 Vict. c. ciii, "An Act for making New Docks," &c. at Kingston-upon-Hull, for the purpose of assessing the sum of money to be paid to William Jubb by the Dock Company at Kingston-upon-Hull, for the purchase of his interest in a certain brew-house and yard situate &c., and also the sum of money to be paid to him by the said company for any damage by him sustained by the execution by the said company of the several works by the said act authorised. It appeared that William Jubb was the owner and occupier of the brewery and premises in question at Kingston-upon-Hull, which the Hull Dock Company required for the purpose of new docks to be constructed under the powers given by stat. 7 & 8 Vict. c. ciii, (local and personal, public). By sect. 79 of that act, power is given to the company to purchase lands. By sect. 83 it is enacted, that the owners of such lands, or of any estate or interest therein as aforesaid, may agree to accept, and, subject to the restrictions in this act contained as to the payment thereof, may accept satisfaction for the value of such lands, or any interest therein, to which such party shall be entitled; and, in addition to compensation for the value of such lands, or of the interest therein to be so conveyed, such parties shall be entitled to "compensation for any damage by them sustained, by reason of the severing or dividing of such lands, or otherwise, owing to the exercise of the powers of this act." By sect. 103 it is enacted, that the company shall give notice of their intention to take lands, and that every such notice shall state that the company are willing to treat for the purchase of the interest of such party; and, "as to the compensation to be made for the damage that may be sustained by him by reason of the making of the said docks and works hereby authorised," by sect. 104 it is enacted, that, if such party and the company differ as to the amount of compensation to be paid to such party for his interest, or "for any damage that may be sustained by him by reason of the execution of the works hereby authorised," the amount shall be settled in manner

hereinafter provided. By sect. 106 it is enacted, that if any difference shall arise, or if no agreement can be come to, between the company and the owners of any lands taken or required for, or injuriously affected by, the execution of the works hereby authorised, as to the value of such lands, or "as to the compensation to be made in respect thereof," the amount of the compensation to be paid by the company shall be settled by the verdict of a jury in the manner hereinafter mentioned. By sect. 108 it is enacted, that, one month before issuing their warrant for summoning a jury, the company shall give notice to the party, and in such notice shall state what sum of money they are willing to give such party "for his interest in such lands, and for the damage to be sustained by him by the execution of the works hereby authorised." By sect. 117 it is enacted, "that such jury" (the jury to be summoned to award compensation for the loss of any property taken by the company) "shall deliver their verdict for the sum of money to be paid for the purchase of the lands required for the works hereby authorised, or of any interest therein, belonging to the party with whom such question of disputed compensation shall so have arisen, and also the sum of money to be paid for the injury done to the lands of any such party by the severance of such lands from the lands required by the company, and also the sum of money to be paid by way of compensation for the damage occasioned to any such lands by the execution of the works, whether it be for damage sustained before the time of the inquiry, or for future damage, either temporary or permanent, or for any recurring damage of which the cause is then only in part obviated, and which cannot or will not be further obviated, by the company; and the sums of money to be paid for the injury done by any such severance as aforesaid, or by way of compensation for any such damage as aforesaid, shall in every case be assessed separately from the value of the lands, or the sum to be paid for the purchase thereof, or of any interest therein." The notices required by the 103rd and 108th sections were served by the company on Mr. Jubb; and on the 30th March, 1846, another notice, in pursuance of sect. 114, stating that a warrant had been issued to the coroner of Hull, requiring him to summon a jury "to inquire of, assess, and determine, by their verdict in that behalf, the sum of money to be paid for the purchase of the interest of you the said William Jubb in a certain brewhouse," &c., "and also the sum of money to be paid to you the said William Jubb, for any damage by you sustained by the execution of the

works aforesaid." On the inquisition, it was objected on behalf of the company, that the 117th section defined and restricted the subjects of inquiry for the jury, and that they had no power to enter upon the question of compensation to Mr. Jubb for loss or damage which he might sustain in his business from the taking of his brewhouse and premises by the company. The coroner overruled the objection, and the finding of the jury was as follows:—"The jurors assess and determine upon their oath the compensation to be paid by the said Company to the said William Jubb, as follows:—(that is to say), the sum of 400*l.* for the purchase of the interest of him in his brewhouse, yard, and premises, with the appurtenances, and all the bricks and buildings connected therewith; and the further sum of 300*l.* as compensation for the damage, loss, and injury which he the said William Jubb will sustain by reason of his having to give up his business as a brewer, until he can find suitable premises in which to carry on his said business of brewer." By the 289th section it is enacted, "that no proceeding in pursuance of this act or the said recited acts, or either of them, shall be quashed or vacated for want of form; nor shall the same be removed by certiorari or otherwise into any of the superior courts." Cur. adv. vult.

Lord DENMAN, C. J., now delivered the judgment of the Court.—**This was an application for a writ of certiorari to remove into this court, in order to quash it, a certain inquisition to award compensation to William Jubb for the loss of some premises taken from him by the Hull Dock Company for the construction of new works. The finding of the jury, so far as it is material to the present purpose, is as follows:—[His Lordship read it.]**

And the objection applies to the latter part of this finding, it being contended on behalf of the company, that the jury have exceeded the powers given to them by the Hull Dock Act, and that, by reason of that excess, the inquisition is wholly void. The question, therefore, turns upon the true construction of that act; and although several clauses were referred to in the course of the argument, it was at length agreed that the 117th is the material section. That is in these terms:—[His Lordship read it.]

And the question is, (as it was throughout the argument properly assumed to be) whether it was competent for the jury, under this clause, to award the latter sum of 300*l.* for the kind of injury alleged to have been sustained? Because, in this stage of the proceedings, it must be assumed that there was sufficient proof of such injury, and

it is certain that damage to the amount awarded may have been sustained by the interruption or breaking up of such a trade, and that, therefore, it must be considered, à priori, a reasonable subject for compensation.

The difficulty in this case arises from the language of the latter branch of the clause under which alone this species of compensation can be given; the former part expressly relating to the purchase of land (meaning, in this act, any kind of property) and to "the money to be paid for the injury to the lands of any such party (meaning, of course, the party interested) by the severance of such lands." Then follows the third branch of injury: "And, also, the sum of money to be paid by way of compensation for the damage occasioned to any such lands:"—Not to the *owner of, or party interested in*, such lands; nor is such owner or party mentioned or designated, except by implication, arising from the expression, "sum of money to be paid," which can only mean to the owner or party interested. That such must have been the meaning, and that the words "owner or party interested" have been accidentally omitted, or are to be considered as understood, seems tolerably clear from this, that any injury to property as unconnected with an owner is unmeaning and absurd. And, in this very act, such is the form of expression generally used. In sect. 100, "making compensation for any damage thereby occasioned to the owners or occupiers of such land" is the language; In sect. 103, "damage sustained by him (the party interested) by making the docks." And, again, in sect. 104, "compensation for any injury that may be sustained by *him* by reason of the execution of the works."

To this may be added, that, in sect. 106, wherein mention is first made of having recourse to a jury, in the event of certain other modes of adjustment having failed, that jury is to assess "the amount of the compensation to be paid by the company." And it is to be observed, that "compensation" is mentioned without any limitation or restriction, and must be understood as meaning remuneration or satisfaction for injury or damage of every description. If, then, the words "damage occasioned to any such lands" may be considered as virtually incorporating "owner of," or "party interested in," any such lands, the rest we think is quite clear; because we have no doubt but that the expressions "damage before the inquiry," and "future damage, temporary or permanent," are large enough to sustain the finding of the jury as to the latter sum of 300*l*. And

upon the whole, in a case where we see no reason to doubt that substantial justice has been done, we are of opinion, that, without any excessive and unauthorised violence of construction, we may read the latter part of the clause in question in the manner above suggested.

We do not think that the cases cited have any very material bearing upon the present. In *Reg.* v. *The Justices of the West Riding of Yorkshire*, (*In the Matter of the Ayr and Calder Navigation Company*), (1 Adol. & Ell. 563), which is perhaps the nearest, and in which the jury had found, present damages, nothing; future damages, 2300*l.*; this Court refused a mandamus, directing the sessions to enter a verdict in a particular manner, because they held that course to be getting rid by a side-wind of clauses in an act of Parliament, by which a certiorari was expressly taken away. There was no decision upon the finding of the jury. In the case of *Lee* v. *Milner*, (2 Mee. & W. 334), indeed, the Court of Exchequer did hold, that the finding of the future damages could not be sustained, upon the ground, that, in the absence of any actual and present damage, such finding must needs be uncertain and wild speculation. Supposing, however, that decision to be quite correct, it does not affect this case; because, here, the jury had sure grounds for ascertaining the amount of damage. In the case of *Reg.* v. *The London Dock Company*, (5 Adol. and Ell. 163), this Court held, that the tenant of a public house, whose custom had been affected by the cutting off communication by reason of the works of the company, was not entitled to compensation. But, in that case, no part of the premises had been taken or touched by the company.

The other cases cited respect the power of this Court and its right of interference where inferior Courts exceed their jurisdiction wholly or partially—a subject into which it is not needful for us to enter.

Upon the whole, we are of opinion that the rule must be discharged.—*Rule discharged.*

Cases relating to the Diversion of Roads, p. 381.

Construction of an agreement for the purchase of lands required for the purposes of a railway. A reference to plans and sections deposited is not permitted.

Breynton v. *The London and North-western Railway Company*, (11 *Jurist*, 28, *Dec.* 19, 1846).]—The plaintiff, William Breynton, was the owner of a piece of land in the parish of Armitage, in the county of Stafford, and of a brick-kiln and other works erected thereon. The railroad from Stafford to Rugby crossed over a

portion of the land. The railroad had been purchased by the London and North-western Railway Company, the present defendants; and the question in dispute was, as to how far the company were entitled to interfere with a certain carriage-road which passed over the plaintiff's land, and the use of which was of considerable value to the plaintiff. The Trent Valley Railway Act, being the act under which the railroad was made, (8 & 9 Vict. c. cxii), made special provision for enabling the company to carry their railway on a level with this carriage-road. By an agreement dated the 26th July, 1846, and made between the plaintiff of the one part, and the agent of the railway company of the other part, after reciting, that, by an act of Parliament, known as the Land Clauses Consolidation Act, provision is made for settlement by arbitration of all matters connected with the sale of lands for public purposes; and after reciting, that the company were desirous of purchasing certain lands of the plaintiff in the parish of Armitage, for the purpose of constructing a railway from Stafford to Rugby, according to a certain plan and section thereof deposited with the parish clerk of the said parish, which said lands had been staked out by the agents of the said company, and contained by admeasurement 1A. 3R.; it was witnessed, that the plaintiff agreed to sell, and the agent of the company agreed to purchase, the land in question. Subsequently to this agreement, the company found it advisable to alter their plan of carrying the railway on a level with the carriage-road; and thereupon the plaintiff filed a bill for an injunction on the ground of the injury inflicted upon him by this alteration. On 1st October, 1846, an injunction was obtained ex parte, to restrain the company from lowering or excavating the carriage-road, so as to interfere with or affect the complainant's land in any manner inconsistent with the provisions of the Trent Valley Railway Act of Parliament, or the plans and sections therein referred to, or the agreement of the 26th July, 1846. This injunction was subsequently dissolved by the Master of the Rolls, and the case was now brought by way of appeal before the Lord Chancellor.

Lord Cottenham, C.—This seems to me a very plain case. It turns on the agreement; because, under the particular act, the company have a right to pass the road on a level, a thing most objectionable, if it can be avoided; and by the general act they would have power to pass under the road. Have they parted with these powers by their agreement? There is no such contract between the plaintiff

and the company. The contract is, that the company, having to pass over the land, therefore agree to purchase the land. To shew this, I need only refer to the instrument itself. It recites, that the company are desirous of purchasing the plaintiff's land, for the purpose of constructing their railway, according to a certain plan and section thereof, deposited with the parish clerk, and that land has been staked out by the agents of the company; the contract, then, is to sell, that is all. It is only saying, "We have staked out certain land, deposited our plans, and now we wish to purchase." From this contract, the necessity of lowering the road may arise, but this contingency is no part of the contract. The company may make a road over the land at any time, and lower the carriage-road afterwards, and if any damage should arise from so doing, compensation must be made to the parties injured. So far as the plan is necessary to the contract, it becomes by reference part of the contract; but so far as it is not necessary to the contract, reference does not make it part of the contract. Quoad the plan then, so far as lowering or not lowering the road is concerned, the agreement is silent. As to injury to the plaintiff, there is none. If any injury is caused in the construction of the railway, there is compensation under the provisions of the act. If it arises from anything unconnected with the construction of the railway, the contract has nothing to do with it, and the case must be put on quite different grounds. The exhibition of the plan cannot be referred to in order to raise an equity between parties. There is no ground for granting an injunction. The act says that the railway company may from time to time make the railway. The argument on the other side is this: that when once they have shewn an intention to make it in one particular mode, there can be no change or alteration. There is no ground for this argument. The present application must be refused.

Cases in Equity, p. 592.

The decision in *Sharp* v. *Day*, ante, 592, overruled by Lord *Lyndhurst*, C., on appeal.

Sharp v. *Day*, 16 *Law Journal*, (*Ch.* 7).—This case, decided before Knight Bruce, V. C., (see ante, 592), was appealed against to the Lord Chancellor, and Lord *Lyndhurst*, C., delivered judgment as follows:—

The parties composing the provisional committee in this case had incurred joint debts and liabilities to a considerable amount. They were also, independently of the subscriptions mentioned in the bill, possessed of joint property to some extent. It is so stated in the bill

and for the present purpose, the statement must be taken to be true. The plaintiff complains that the defendants have possessed themselves of this property, and that it is applicable, and ought to be applied to the discharge of the joint debts and liabilities, but that the defendants intended to apply it to other and improper purposes. He prays therefore, among other things, for an account of this property, and of the joint debts and liabilities, and that the property may be applied in the discharge of such debts, &c. It appears to me, upon this statement, that there is enough of averment in the bill to sustain it against a general demurrer for want of equity. But the bill goes much farther: the plaintiff requires not only an account of this property, but also of the fund subscribed, pursuant to the resolutions of the meeting of the provisional committee, but to which he had refused to contribute. He complains of the intended misapplication of the money, and prays various matters respecting it. I cannot understand, however, by what right he claims to represent the subscribers to this fund, or to unite himself with them in a suit respecting it. The money was voted and paid upon the faith that all would contribute their proportion. This the plaintiff declined doing. He can have no right therefore to interfere with the fund, or to direct or control its application; it belongs exclusively to the subscribers, and if he wishes to enforce any supposed claim with respect to it, he cannot, I conceive, do this by representing or uniting himself with them, but must proceed adversely against them, and in such a manner as to give them an opportunity of properly defending their rights. The plaintiff is seeking to free himself from liability at their expense; that is, out of a fund which belongs solely to them.

A principal object of the bill is to restrain further proceedings in the action at law brought by Day. The subscribers have no interest in obtaining this injunction; still less have they an interest in applying a fund exclusively theirs in discharge of the debt for which the action is brought. I think, therefore, the record is improperly framed in respect to the parties, and that the demurrer ought to be allowed. I feel the less difficulty in coming to this conclusion, as the Vice-chancellor rested his judgment principally upon the doubts which he entertained when the case was before him.

APPENDIX.

STATUTES RELATING TO RAILWAYS.

NOTE.—*The repealed portions of these Statutes are printed in italics.*

2 & 3 WILL. IV. CAP. 120.

An Act to repeal the Duties under the Management of the Commissioners of Stamps, on Stage Carriages and on Horses let for Hire in Great Britain, and to grant other Duties in lieu thereof; and also to consolidate and amend the Laws relating thereto. [16*th August*, 1832.

BY this statute, (sect. 4 and Schedule (A).), the following duties are made payable on passengers conveyed for hire by carriages travelling upon railways; (that is to say),

The proprietor or company of proprietors of every railway in Great Britain along which any passengers shall be conveyed for hire in or upon carriages drawn or impelled by the power of steam, or otherwise, shall pay for and in respect of all such passengers at and after the rate of one halfpenny per mile for every four passengers so conveyed.

Proprietors of railways to keep and render accounts of the passengers conveyed along the same, and to pay the duty by this act charged thereon.

L. And be it enacted, That the proprietor or company of proprietors of every railway in Great Britain along which any passengers shall, after the 10th day of October one thousand eight hundred and thirty-two, be conveyed for hire in or upon any carriage drawn or impelled by the power of steam, or otherwise, shall from time to time keep and cause to be entered in a book or books to be kept for that purpose, and which shall at all times be open for the inspection and examination of any authorized officer of stamp duties, a just and true account of the number of passengers which shall be conveyed daily for hire in manner aforesaid along any such railway or any part thereof, and of the number of miles which such passenger shall respectively be so conveyed; and every such proprietor or company shall, within five days next after the first Monday in every calendar month, deliver to the commissioners of stamps, or to such officer as they shall authorize to receive the same, a true copy of the account by this act directed to be kept, so far as the same shall relate to the passengers conveyed as aforesaid, during the preceding four or five weeks, (as the case may be), that is to say, from the first Monday in the preceding month up to and including the first Monday of the month in which such account shall be rendered; and to and with every such account there shall be annexed and delivered an affidavit or affirmation (to be taken before any one of his Majesty's justices of the peace) of the secretary, chief clerk, or accountant of such proprietor or company, stating that the deponent or affirmant has examined and checked such account with the books of the said proprietor or company, and that, to the best of

the knowledge, information, and belief of such deponent or affirmant, such account doth contain and is a true and faithful account of the several matters and things required by this act; and such proprietor or company shall at the time of delivering every such account pay or cause to be paid to the receiver-general of stamp duties, or to the officer authorized by the said commissioners to receive the same for the use of his Majesty, the duties chargeable under this act for or in respect of the passengers so conveyed according to such account.

oprietors of ilways to give curity to keep d render such counts and pay ty. &c.

LI. And be it enacted, That the proprietor or company of proprietors of every such railway shall, before any passengers shall be conveyed along the same in the manner aforesaid, after the tenth day† October one thousand eight hundred and thirty-two, give security by bond to his Majesty, with a condition that such proprietor or company shall from time to time keep and cause to be kept and rendered in the manner directed by this act the accounts by this act required to be kept and rendered by such proprietor and company respectively; and that such proprietor or company shall from time to time, upon every reasonable request of any authorized officer of stamp duties, produce and shew to such officer, and permit him to inspect and examine, all and every the books and book of such proprietor or company in which any such account shall be contained or entered; and that such proprietor or company shall well and truly pay or cause to be paid for the use of his Majesty, at the times and in manner directed by this act, all and every the duties which shall from time to time become chargeable under this act for or in respect of the passengers which shall be so conveyed as aforesaid along such railway; and that such proprietor or company shall well and truly do and perform and cause to be done and performed all such acts, matters, and things as by this act are required or directed to be done or performed by or on the part or behalf of such proprietor or company; and every such bond shall be taken with sufficient sureties to the satisfaction of the commissioners of stamps, and in such sums as the said commissioners may judge to be the probable amount of the duties which may become payable by such proprietor or company under or by virtue of this act during the period of one quarter of a year; and every such security shall be renewed from time to time whenever and so often as such bond shall be forfeited, or as the parties to the same or any of them shall die or become bankrupt or insolvent, or reside in parts beyond the seas, and also whenever and so often as the said commissioners shall in their discretion require the same to be renewed; and if any proprietor or company of proprietors of any such railway as aforesaid shall, after the said tenth day of October, convey or permit or suffer to be conveyed in manner aforesaid, along such railway or any part thereof, any passengers for hire, without having first given such security by bond to his Majesty in manner hereinbefore directed, or if any such proprietor or company shall refuse or neglect to renew such security, whenever and so often as the same is or shall by or in pursuance of this act be required to be renewed, such proprietor or company shall forfeit one hundred pounds for every day during the period for which there shall be any refusal, neglect, or default to give or renew such security as aforesaid.

Treasury may compound with the proprietors of railways for the duties chargeable

LII. Provided always, and be it enacted, That it shall be lawful for the lords commissioners of his Majesty's Treasury, or any three or more of them, from time to time, where and whenever they shall deem it expedient, to compound and agree with the proprietor or company of proprietors of any such railway as aforesaid for any sum

or sums of money less than the amount of the duties which may be or become chargeable under this act, to be paid by such proprietor or company in lieu of the said duties for or in respect of the passengers conveyed or to be conveyed along such railway, during any period of time not exceeding the term of seven years, and from time to time to renew any such composition for any further period, not exceeding the term aforesaid, upon such terms and conditions as may be agreed upon by and between the said lords commissioners and such proprietor or company.

on passengers conveyed on such railways.

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1 VICT. CAP. 83.

An Act to compel Clerks of the Peace for Counties, and other Persons, to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.
[17*th July*, 1837.

Whereas the Houses of Parliament are in the habit of requiring that, previous to the introduction of any bill into Parliament for making certain bridges, turnpike-roads, cuts, canals, reservoirs, aqueducts, waterworks, navigations, tunnels, archways, railways, piers, ports, harbours, ferries, docks and other works, to be made under the authority of Parliament, certain maps or plans and sections, and books and writings, or extracts or copies of or from certain maps, plans, or sections, books and writings, shall be deposited in the office of the clerk of the peace for every county, riding, or division in England or Ireland, or in the office of the sheriff clerk of every county in Scotland, in which such work is proposed to be made, and also with the parish clerk in every parish in England, the schoolmaster of every parish of Scotland, or in royal burghs with the town clerk, and the postmaster of the post-town in or nearest to every parish in Ireland, in which such work is intended to be made, and with other persons; and whereas it is expedient that such maps, plans, sections, books, writings, and copies or extracts of and from the same, should be received by the said clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, postmasters, and other persons, and should remain in their custody for the purposes hereinafter mentioned; be it therefore enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That whenever either of the houses of Parliament shall by its standing orders already made or hereafter to be made, require that any such maps, plans, sections, books, or writings, or extracts or copies of the same, or any of them, shall be deposited as aforesaid, such maps, plans, sections, books, writings, copies, and extracts shall be received by and shall remain with the clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, postmasters, and other persons with whom the same shall be directed by such standing orders to be deposited, and they are hereby respectively directed to receive and to retain the custody of all such documents and writings so directed to be deposited with them respectively, in the manner and for the purposes and under the rules and regulations concerning the same respectively directed by such standing orders, and shall make such memorials and endorsements on, and give such acknowledgments and receipts in respect of the same respectively as shall be thereby directed.

Clerks of the peace, &c., to receive the documents herein mentioned, and retain them for the purposes directed by the standing orders of the houses of Parliament.

II. And be it further enacted, That all persons interested shall have

Clerks of the

peace, &c., to permit such documents to be inspected or copied by persons interested.

liberty to, and the said clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, and postmasters, and every of them, are and is hereby required, at all reasonable hours of the day, to permit all persons interested to inspect during a reasonable time, and make extracts from or copies of the said maps, plans, sections, books, writings, extracts, and copies of or from the same, so deposited with them respectively, on paymentby each person to the clerk of the peace, sheriff clerk, clerk of the parish, schoolmaster, town clerk, or postmaster, having the custody of any such map, plan, section, book, writing, extract, or copy, one shilling for every such inspection, and the further sum of one shilling for every hour during which such inspection shall continue after the first hour, and after the rate of sixpence for every one hundred words copied therefrom.

Clerks of the peace, &c., for every omission to comply with the provisions of this act, liable to the penalty of 5*l.*, to be recovered in a summary way.

III. And be it further enacted, That in case any clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster, or other person, shall in any matter or thing refuse or neglect to comply with any of the provisions hereinbefore contained, every clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster, or other person, shall for every such offence forfeit and pay any sum not exceeding the sum of five pounds; and every such penalty shall, upon proof of the offence before any justice of the peace for the county within which such offence shall be committed, or by the confession of the party offending, or by the oath of any credible witness, be levied and recovered, together with the costs of the proceedings for the recovery thereof, by distress and sale of the goods and effects of the party offending, by warrant under the hand of such justice, which warrant such justice is hereby empowered to grant, and shall be paid to the person or persons making such complaint; and it shall be lawful for any such justice of the peace to whom any complaint shall be made of any offence committed against this act, to summon the party complained of before him, and on such summons to hear and determine the matter of such complaint in a summary way, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing or in print shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good, valid, and effectual to all intents and purposes as if an information in writing had been exhibited.

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1 & 2 VICT. CAP. 98.

An Act to provide for the Conveyance of the Mails by Railways (*a*).

[14*th August*, 1838.

Whereas it is expedient that provision should be made by law for the conveyance of the mails by railways at a reasonable rate of charge to the public (*b*); be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in all cases of railways already made or in progress or to be hereafter made within the

Postmaster-General may require

(*a*) This statute was founded on a report made by a select committee of the House of Commons in 1837. References are hereafter made to other Reports of Committees of the same House.

(*b*) See also 7 & 8 Vict. c. 85, sect. 11, post.

United Kingdom, by which passengers or goods shall be conveyed in or upon carriages drawn or impelled by the power of steam, or by any locomotive or stationary engines, or animal or other power whatever, it shall be lawful for the Postmaster-General, by notice in writing under his hand delivered to the company of proprietors of any such railway, to require that the mails or post letter-bags shall from and after the day to be named in any such notice (being not less than twenty-eight days from the delivery thereof) be conveyed and forwarded by such company on their railway, either by the ordinary trains of carriages, or by special trains, as need may be, at such hours or times in the day or night as the Postmaster-General shall direct, together with the guards appointed and employed by the Postmaster-General in charge thereof, and any other officers of the Post Office; and thereupon the said company shall, from and after the day to be named in such notice, at their own cost, provide sufficient carriages and engines on such railways for the conveyance of such mails and post letter-bags to the satisfaction of the Postmaster-General, and receive, take up, carry, and convey, by such ordinary or special trains of carriages or otherwise, as need may be, all such mails or post letter-bags as shall for that purpose be tendered to them, or any of their officers, servants, or agents, by any officer of the Post Office, and also receive, take up, carry, and convey, in and upon the carriages carrying such mails or post letter-bags, the guards in charge thereof, and any other officers of the Post Office, and shall receive, take up, deliver, and leave such mails or post letter-bags, guards, and officers at such places in the line of such railway, on such days, at such hours or times in the day or night, and subject to all such reasonable regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, and times of arrival, as the Postmaster-General shall in that behalf from time to time order or direct: provided always, that the rate of speed to be required shall in no case exceed the maximum rate of speed prescribed by the directors of such railway or railways for the conveyance of passengers by their first class trains; but that no alteration in the rate of speed of any train by which the mails shall be conveyed shall be made until six calendar months' previous notice shall be given to the Postmaster-General of any such intended alteration.

Railway companies to convey the mails.

II. And be it enacted, That it shall be lawful for the Postmaster General (if he shall see fit) to require that the whole of the inside of any carriage used on any railway for the conveyance of mails or post letter-bags shall be exclusively appropriated for the purpose of carrying the mails.

If required, carriage to be applied exclusively to such conveyance.

III. And be it enacted, That the company of proprietors of any such railway shall, on being required so to do by the Postmaster-General, provide and furnish (in addition to the carriages aforesaid) a separate carriage or separate carriages, fitted up as the Postmaster-General, or such person as he shall nominate in that behalf, shall direct, for the purpose of sorting letters therein, and shall forward the same carriage or carriages by their railway, at such hours or times, and subject to all such reasonable regulations as aforesaid, as the Postmaster-General shall in that behalf order or direct; and such company of proprietors shall receive, take up, carry, and convey in any such last-mentioned carriage or carriages, all such post letter-bags and officers of the Post Office as the Postmaster-General shall reasonably require, and shall deliver and leave any post letter-bags and officers of the Post Office at such places on the line of the rail-

Railway company, if required, to provide separate carriage for sorting letters.

APPENDIX.

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way as the Postmaster-General shall in that behalf from time to time reasonably order and direct.

Postmaster-General may direct mails to be carried on railway in mail-coaches in lieu of company's carriages.

IV. And be it enacted, That, in case the Postmaster-General shall at any time be desirous of sending by any such railway any of her Majesty's mail coaches or mail carts, with the mails or post letter-bags and guards thereof, and carriages for sorting letters, with any officers of the Post Office therein, instead of sending the said mails or post letter-bags, guards, and officers of the Post Office by carriages to be provided by such railway company as aforesaid, then and in any such case such railway company shall, at the request of the Postmaster-General, signified by such notice as aforesaid, cause such mail coaches or mail carts, with the mails or post letter-bags and guards thereof, and carriages for sorting letters, with any officers of the Post Office therein, to be conveyed by the usual or proper trucks or frames on their said railway, subject to such regulations and restrictions of the Postmaster-General as hereinbefore mentioned.

Railway companies to be subject to directions of Post Office respecting conveyance of mails.

V. And be it enacted, That, for the greater security of the mails or post letter-bags so to be carried or conveyed by railways, the company of proprietors of such respective railways along which such mails or post letter-bags, mail coaches or carts and carriages for sorting letters shall be so required by the Postmaster-General to be conveyed, and their respective officers, servants, and agents, shall obey, observe, and perform all such reasonable regulations respecting the conveyance, delivering, and leaving of such mails and post letter-bags, guards, and officers of the Post Office, mail coaches, or carts and carriages, on any such railways, or on the line thereof, as the Postmaster-General, or such officer of the Post Office as he shall nominate in that behalf, shall in his discretion from time to time give or make: provided always, that it shall not be lawful for any officer or servant of the Post Office to interfere with or give orders to the engineer or other person having the charge of any engine upon any railway along which mails or post letter-bags shall be conveyed; but if any cause of complaint shall arise, the same shall be stated to the conductor or other officer of the railway company having the charge of the train, or to the chief officer at any station upon the railway; and, in case of any default or neglect on the part of any officers or servants of the railway company to comply with any of the regulations of the Postmaster-General or other officer of the Post Office so to be nominated as aforesaid, the railway company shall be wholly responsible for the same.

Remuneration to railway companies for conveyance of mails.

VI. And be it enacted, That every company of proprietors of any railway along which such mails or post letter-bags, mail coaches, carts, or carriages shall be so required by the Postmaster-General to be conveyed, shall be entitled to such reasonable remuneration to be paid by the Postmaster-General to any such company of proprietors for the conveyance of such mails, post letter-bags, mail guards, and other officers of the Post Office, mail coaches, carts, and carriages in manner required by such Postmaster-General, or by such officer of the Post Office as he shall in that behalf nominate as aforesaid, as shall (either prior to or after the commencement of such service) be fixed and agreed on between the Postmaster-General and such company of proprietors, or in case of difference of opinion between them, then as shall be determined by arbitration as hereinafter provided, but so that the services which may be required by the Postmaster-General, or by such officer of the Post Office as he in that behalf shall nominate as aforesaid, to be performed by any such company of

proprietors, be not suspended, postponed, or deferred by reason of such remuneration not having been then fixed or agreed on between the said Postmaster-General and such company of proprietors, or by reason of the award on any reference to arbitration to determine the remuneration not having been then made.

Agreements between Postmaster-General and railway companies as to amount of remuneration, &c., may be altered.

VII. And be it enacted, That, notwithstanding any agreement entered into between the Postmaster-General and any such company, or any award to be made on any such reference as aforesaid, fixing the amount of remuneration to be paid to such company for any services to be rendered by them as aforesaid, it shall be lawful and competent to and for the Postmaster-General, by notice in writing, to require, from and after the day to be named in any such notice, not being less than twenty-eight days from the delivery thereof, any addition to be made to the services in respect of which such agreement shall be entered into or award made; and in any such case, and also in case of a discontinuance of any part of such services as hereinafter provided, a fresh agreement shall be entered into between the Postmaster-General and such company, regulating the future amount of remuneration to be paid by the Postmaster-General to such company for such increased or diminished services, as the case may be; or, if the parties cannot agree on such amount, the same shall be referred to arbitration in like manner as hereinbefore is mentioned and hereinafter provided as to any original agreement; and such arbitrators shall have power to award any compensation they may consider reasonable to be paid to any railway company for any loss that may have been occasioned to them by the discontinuance or alteration of the services previously agreed to be performed by them by any train or carriage specially required by the Postmaster-General to be forwarded for the conveyance of the mails, but so that nevertheless such increased or diminished services shall not be suspended, postponed, or deferred by reason of the amount of such increased or diminished remuneration not having been then fixed or agreed on between the Postmaster-General and such company of proprietors, or by reason of the award on any reference to arbitration to determine the amount of such increased or diminished remuneration not having been then made.

Postmaster-General may terminate services of railway companies on notice;

VIII. And be it enacted, That it shall be lawful for the Postmaster-General, and he is hereby authorized, at any time during the continuance of the services of any company of proprietors as aforesaid, to give to such company, by writing under his hand, six calendar months' previous notice that such services, or any part thereof, shall cease and determine; and thereupon, at the expiration of such six calendar months' notice, the said services, or such part thereof as aforesaid, and the remuneration for the same, shall cease and determine.

or may terminate services of railway companies without notice, subject to certain conditions

IX. And be it enacted, That it shall be lawful for the Postmaster General at any time during the continuance of the services of any company of proprietors as aforesaid, by notice in writing under his hand, absolutely to determine and put an end to the same or any part thereof, without giving any previous notice, or on giving any notice less than six calendar months in respect thereof, and thereupon the said services shall cease and determine accordingly: provided, nevertheless, that in case the Postmaster-General shall, without giving six calendar months' notice as aforesaid, at any time determine the services to be required by the Postmaster-General of any company of proprietors, or any part of such services, without any cause whatever,

or for any cause other than the default by such company of proprietors in the performance of any of the services to be required of them by the Postmaster-General, or the breach by such company of proprietors of any of their engagements with the Postmaster-General, then and in any such case the Postmaster-General shall make to such company a full and fair compensation for all loss thereby occasioned, the amount whereof, in case the parties differ about the same, shall be ascertained by arbitration as hereinafter mentioned.

Royal arms to be painted on engines or carriages provided for the service of the Post-Office.

X. And be it enacted, That on all carriages to be provided for the service of the Post Office on any such railway there shall on the outside be painted the royal arms, in lieu of the name of the owner and of the number of the carriage, and of all other requisites, if any, prescribed by law in respect of carriages passing on any such railway; but the want of such royal arms on any carriage belonging to or used by the Post Office shall not form an objection to such carriage running on any railway, anything to the contrary notwithstanding.

Bye-laws of railway companies not to be repugnant to provisions of act.

XI. And be it enacted, That it shall not be competent or lawful to or for the company of proprietors of any railway to make any bye-laws, orders, rules, or regulations which shall militate against or be contrary or repugnant to any of the enactments herein contained; and that if any company of proprietors shall make or shall have made any such bye-laws, orders, rules, or regulations, either prior or subsequently to the Postmaster-General signifying to the said company his intention that the mails or post letter-bags, mail coaches, carts, or carriages shall be conveyed by such railway, all such bye-laws, orders, rules and regulations, so far as they shall militate against or be contrary or repugnant to any of the enactments herein contained, shall be and be deemed absolutely void and of no effect, in like manner as if such bye-laws, orders, rules, or regulations had never been made or passed, anything to the contrary in anywise notwithstanding.

Penalty for refusing or neglecting to convey mails.

XII. And be it enacted, That if the company of proprietors of any railway, or any of their respective officers, servants, or agents, shall refuse or neglect to carry or convey any mails or post letter-bags, when tendered to them for such purpose by the Postmaster-General or any officer of the Post Office, or shall refuse to carry on their railway any mail coaches, carts, or carriages as hereinbefore provided, when so required by the Postmaster-General, or shall refuse or neglect to receive, take up, deliver, and leave any such mails or post letter-bags, mail guards or other officers of the Post Office, mail coaches, carts, or carriages, at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and durations of stoppages, as the Postmaster-General shall from time to time reasonably direct or appoint, as hereinbefore provided, or shall not obey, observe, and perform all such regulations respecting the conveyance of the mails and post letter-bags, mail coaches, carts, and carriages, on any such railways as the Postmaster-General, or such officer of the Post Office as he shall nominate in that behalf, shall make for the purposes aforesaid, then and in any such case the company of proprietors who, or whose officer, servant, or agent, shall so offend in the premises, shall for every such offence forfeit and pay a sum not exceeding twenty pounds; provided nevertheless, that the payment of or liability to such penalty shall not in any manner lessen or affect the liability of any such company under any bond which may have been given by them under the provisions hereinafter contained.

Postmaster-General may require railway companies to give security by bond.

XIII. And be it enacted, That it shall be lawful for the Postmaster-General, if he shall so think fit, to require the company of proprietors of any railway already made, or in progress, or to be hereafter made within the United Kingdom, to give security by bond to her Majesty, her heirs and successors, conditioned to be void if such company shall from time to time carry or convey, or cause to be carried or conveyed, all such mails or post letter-bags, mail guards and other officers of the Post Office, mail coaches, carts, and carriages, in manner hereinbefore mentioned, when thereunto required by the Postmaster-General or any officer of the Post Office duly authorized for that purpose, and shall receive, take up, deliver, and leave all such mails or post letter-bags, guards, and officers, mail-coaches, carts, and carriages, at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, as hereinbefore mentioned, and shall obey, observe, and perform all such regulations respecting the same as the Postmaster-General shall reasonably make, and shall well and truly do and perform, and cause to be done and performed, all such other acts, matters, and things as by this act are required or directed to be done or performed by or on the part or behalf of such company, their officers, servants, and agents; and every such bond shall be taken in such sum and in such form as the Postmaster-General shall think proper; and every such security shall be renewed from time to time, whenever and so often as such bond shall be forfeited, and also whenever and so often as the Postmaster-General shall in his discretion require the same to be renewed; and if any company of proprietors of any such railway as aforesaid shall, when so required as aforesaid, refuse or neglect, for the space of one calendar month next after the delivery of any notice for such purpose to them given by or from the Postmaster-General, to execute to her Majesty, her heirs and successors, such bond to the effect and in manner aforesaid, or shall at any time refuse or neglect to renew such bond, whenever and so often as the same shall, by or in pursuance of this act, be required to be renewed, such company of proprietors shall forfeit one hundred pounds for every day during the period for which there shall be any refusal, neglect, or default to give or renew such security as aforesaid, after the expiration of the said one calendar month.

Lessees of railway, not being a body corporate or company, not to be required to give security by bond above 1000*l*.

XIV. Provided always, and be it enacted, That in all cases in which any railway, or part of a railway, may, previous to the passing of this act, have been demised or let by the company of proprietors thereof, the body corporate or company, or other persons to whom the same shall have been so demised or let, their successors, executors, administrators, or assigns, shall, during the continuance of such lease, be liable to all the provisions of this act, for or in respect of such railway or part of a railway, in lieu of such company of proprietors; but so that such lessees, (not being a body corporate or company), their executors, administrators, or assigns, shall not be required, in respect of any such railway, or part of a railway, to give security under the foregoing enactment to any amount in any one bond exceeding the sum of one thousand pounds, and shall not in any one year be liable in damages to be recovered upon any bonds which they may have given to any amount exceeding the sum of one thousand pounds and costs of suit.

Service of notices.

XV. And be it enacted, That all notices under the provisions of this act, by or on behalf of the Postmaster-General, to any company of proprietors of any railway as aforesaid, shall be considered as duly served on any company of proprietors in case the same shall be given

or delivered to any one or more of the directors of such company, or to the secretary or clerk of such company, or be left at any station belonging to such company.

For settling differences between Postmaster-General and railway companies in certain cases.

XVI. And be it enacted, That in all cases in which the Postmaster-General and any company of proprietors of any railway shall not be able to agree on the amount of remuneration or compensation to be paid by the Postmaster-General to such company of proprietors for any services performed, or to be performed by them as hereinbefore mentioned, the same shall be referred to the award of two persons, one to be named by the Postmaster-General and the other by such company; and if such two persons cannot agree on the amount of such remuneration or compensation, then to the umpirage of some third person, to be appointed by such two first-named persons previously to their entering upon the inquiry; and the said award or umpirage, as the case may be, shall be binding and conclusive on the said parties, and their respective successors and assigns.

Railroad companies, after contracts have existed for a certain period, may refer them to arbitrators to decide as to their continuance.

XVII. And be it enacted, That after any contract entered into or award made under the authority of this act shall have continued in operation for a period of three years, it shall be competent for any railway company who may consider themselves aggrieved by the terms of remuneration fixed by such contract or award, by notice under their common seal, to require that it shall be referred to arbitrators to determine whether any and what alteration ought to be made therein; and thereupon such arbitrators or umpire, to be appointed as hereinbefore mentioned, shall proceed to inquire into the circumstances and make their award therein, as in the case of an original agreement: provided always, that the services performed by such railway company for the Post Office shall in nowise be interrupted or impeded thereby.

Nomination of arbitrators to be within a limited time after application for references made.

XVIII. And be it enacted, That in all references to be made under the authority of this act, the Postmaster-General, or the railway company, as the case may be, shall nominate his or their arbitrator within fourteen days after notice from the other party, or, in default, it shall be lawful for the arbitrator appointed by the party giving notice to name the other arbitrator; and such arbitrators shall proceed forthwith in the reference, and make their award therein within twenty-eight days after their appointment, or otherwise the matter shall be left to be determined by the umpire; and if such umpire shall refuse or neglect to proceed and make his award for the space of twenty-eight days after the matter shall have been referred to him, then a new umpire shall be appointed by the two first-named arbitrators, who shall in like manner proceed and make his award within twenty-eight days, or in default be superseded, and so toties quoties.

Construction of terms.

XIX. And be it enacted, That, whenever the term "company of proprietors," or "railway company," or "company," is used in this act, the same shall extend to and be construed to include the proprietors for the time being of any railway, whether a body corporate or individuals, and also (during the continuance of any demise or lease as aforesaid) any person, whether a body corporate, or company, or individuals, to whom any railway or part of a railway may, previous to the passing of this act, have been demised or let, and their successors, executors, administrators, and assigns, unless the subject or context be otherwise repugnant to such construction; and that the provisions of this act shall be construed according to the respective interpretations of the terms and expressions contained in an act passed in the first year of the reign of her present Majesty, intituled, "An

Vict. c. 36.

Act for consolidating the Laws relative to Offences against the Post Office of the United Kingdom, and for regulating the Judicial Administration of the Post Office Laws, and for explaining certain Terms and Expressions employed in those Laws," so far as those interpretations are not repugnant to the subject or inconsistent with the context of such provisions; and that this present act shall be deemed and construed to be a Post Office act, within the intent and meaning of the said last-mentioned act; and the pecuniary penalties hereby imposed shall be recovered and recoverable in the manner and form therein particularly mentioned and expressed with reference to the pecuniary penalties imposed by the Post Office acts: provided nevertheless, that any justice of the peace having jurisdiction for any county through which any railway shall pass, in respect of which any penalty or forfeiture under this act shall have been incurred, shall and may hear and determine any offence against this act which may subject any company to a pecuniary penalty not exceeding twenty pounds; and a summons issued under the Post Office acts by any such justice against any railway company for the recovery of any such penalty shall be deemed to be sufficiently served in case either the summons or a copy thereof be delivered to any officer, servant, or agent of such company, or be left at any station belonging to such company.

1 & 2 VICT. CAP. 117.

An Act to provide for the Custody of certain Monies paid in pursuance of the Standing Orders of either House of Parliament by Subscribers to Works or Undertakings to be effected under the Authority of Parliament. [16*th August*, 1838.

Authority to deposit.

Whereas it is expedient to provide for the custody of any sums of money paid in pursuance of any standing order of the Lords spiritual and temporal, in Parliament assembled, or of the Commons, in Parliament assembled, by subscribers to works or undertakings to be made under the authority of an act of Parliament; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in all cases in which any sum of money is required by any standing order of either house of Parliament either now or hereafter to be in force, to be paid by the subscribers to any work or undertaking which is to be executed under the authority of an act of Parliament, if the director or person, or directors or persons, having the management of the affairs of any such proposed work or undertaking, or any five of them, shall apply to the chairman of the committees of the House of Lords with respect to any such money required by any standing order of the Lords spiritual and temporal in Parliament assembled, or to the Speaker of the House of Commons, with respect to any such money required by any standing order of the Commons in Parliament assembled, the said chairman or the said speaker may, by warrant or order under his hand, direct that such sum of money shall be paid in manner hereinafter mentioned; that is to say, into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Exchequer in England, if the work or undertaking in respect of which the sum of money is rerequired to be paid is intended to be executed in that part of the United Kingdom called England; or into the Bank of England, in

the name and with the privity of the said Accountant-General, or into any of the banks in Scotland established by act of Parliament or royal charter, in the name and with the privity of the Queen's Remembrancer of the Court of Exchequer in Scotland, at the option of the person or persons making such application as aforesaid, in case such work or undertaking is intended to be executed in that part of the United Kingdom called Scotland, or into the Bank of Ireland, in the name and with the privity of the Accountant-General of the Court of Chancery in Ireland, in case such work or undertaking is intended to be made or executed in that part of the United Kingdom called Ireland; and every such application as aforesaid to the said chairman or speaker shall be made in writing, and be signed by the director or directors, or person or persons, having the management of the said work or undertaking, or by any five of them; and therein shall be stated the name or description of such work or undertaking, and name and place of abode or the names and places of abode of such director or directors, person or persons, and the sum of money required to be paid, and the bank and name into and in which the same is to be paid; and such particulars shall also be set forth in every such warrant or order; and such warrant or order shall be a sufficient authority for the Accountant-General of the said Court of Exchequer in England, the Queen's Remembrancer of the Court of Exchequer in Scotland, and the Accountant-General of the Court of Chancery in Ireland respectively, to permit the sum of money directed to be paid by such warrant or order to be placed to an account opened or to be opened in his name in the bank mentioned in such warrant or order.

Payment of deposit.

II. And be it enacted, That it shall be lawful for the person or persons named in such warrant or order, or the survivors or survivor of them, or any five of them, to pay the sum of money mentioned in such warrant or order into the bank mentioned in such warrant or order, in the name and with the privity of the officer or person in whose name such sum shall be directed to be paid by such warrant or order, to be placed to his account there, ex parte the work or undertaking mentioned in such warrant or order; and every such sum so paid in, or the securities in or upon which the same may be invested as hereinafter mentioned, shall there remain until the same or such securities as aforesaid shall be paid out of such Bank in pursuance of the provisions of this act: provided always, that every sum paid into the Bank of England in the name and with the privity of the Accountant-General of the Court of Exchequer under the provisions of this act, shall be paid in and placed to his account there pursuant to the method prescribed by an act passed in the first year of the reign of his late Majesty King George the Fourth, intituled, "An Act for the better securing Money and Effects paid into the Court of Exchequer at Westminster on account of the Suitors of the said Court, and for the Appointment of an Accountant-General and Two Masters of the said Court, and for other Purposes," and pursuant to the general orders of the said Court, and without fee or reward; and every sum paid into the Bank of Ireland in the name and with the privity of the Accountant-General of the Court of Chancery in Ireland under the provisions of this act, shall be paid in and placed to his account there pursuant to the method prescribed by an act made and passed in the Parliament of Ireland in the twenty-third and twenty-fourth years of the reign of his late Majesty King George the Third, intituled, "An Act for the better securing the Monies and Effects of the Suitors of the Court

1 Geo. 4, c. 35.

23 & 24 Geo. 3. (I).

of Chancery and Exchequer, by depositing the same in the National Bank, and to prevent the forging and counterfeiting any Draft, Order, or other Voucher for the Payment or Delivery of such Money and Effects, and for other Purposes," and pursuant to the general orders of the said court, and without fee or reward.

Investment of deposit.

III. And be it enacted, That, if the person or persons named in such warrant or order, or the survivor or survivors of them, or any five of them, desire to have invested any sum so paid into the Bank of England or the Bank of Ireland, the court in the name of whose accountant-general the same may have been paid, on a petition presented to such court in a summary way by him or them, may order that such sum shall, until the same be paid out of court in pursuance of this act, be laid out in the Three per Centum Consolidated or Three per Centum Reduced Bank Annuities, or any Government security or securities.

Re-payment of deposit.

IV. And be it enacted, that on the termination of the session of Parliament in which the petition or bill for the purpose of making or sanctioning any such work or undertaking shall have been introduced into Parliament, or if such petition or bill shall be rejected or finally withdrawn by some proceeding in either house of Parliament, or shall not be allowed to proceed, or if an act be passed authorizing the making of such work or undertaking; and if in any or either of the foregoing cases the person or persons named in such warrant or order, or the survivor or survivors of them, or the majority of such persons, apply by petition to the court in the name of whose accountant-general the sum of money mentioned in such warrant or order shall have been paid, or to the Court of Exchequer in Scotland, in case such sum of money shall have been paid in the name of the said Queen's remembrancer, the court in the name of whose accountant-general or Queen's remembrancer such sum of money shall have been paid shall, by order, direct the sum of money paid in pursuance of such warrant or order, or the stocks, funds, or securities in or upon which the same are invested, and the interest or dividends thereof, to be transferred and paid to the party or parties so applying, or to any other person or persons whom they may appoint in that behalf; but no such order shall be made in the case of any such petition or bill being rejected, or not being allowed to proceed, or withdrawn, unless it be proved by the certificate of the chairman of committees, if the said petition or bill was rejected or not allowed to proceed, or withdrawn in its passage through the House of Lords, or of the said speaker, if the said petition or bill was rejected or not allowed to proceed, or withdrawn during its passage through the House of Commons, that the petition or bill has been either so rejected, or not allowed to proceed, or so withdrawn by some proceeding in one or other house of Parliament; which certificate the said chairman or speaker shall grant on the application in writing of the person or persons, or the majority of the persons, named in such warrant or order, or the survivor or survivors of them; and every such certificate shall be conclusive proof of such rejection, or not proceeding, or withdrawal.

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2 & 3 VICT. CAP. 45.

An Act to amend an Act of the Fifth and Sixth Years of the Reign of His late Majesty King William the Fourth, relating to Highways.
[17*th August*, 1839.

Whereas, by an act passed in the session of Parliament holden in the fifth and sixth years of the reign of his late Majesty King Wil-

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5 & 6 Will. 4, c. 50.

liam the Fourth, intituled "An Act to consolidate and amend the Laws relating to Highways in that Part of Great Britain called England," it is amongst other things by the said act enacted, that, whenever a railroad shall cross any highway for carts or carriages, the proprietors of the said railroad shall make and maintain good and sufficient gates at each of the said crossings, and shall employ good and proper persons to attend to the opening and shutting of such gates, so that the persons, carts, or carriages passing along such road shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railroad; and any complaint for any neglect in respect of the said gates shall be made within one month after the said neglect to one justice, who may summon the party so complained against to appear before the justices at their next special sessions for the highways, who shall hear and decide upon the said complaint, and the proprietor so offending shall forfeit any sum not exceeding five pounds: And whereas it is also by the said act further enacted, that nothing in this act contained shall apply to any turnpike roads, except where expressly mentioned, or to any roads, bridges, carriageways, cartways, horseways, bridleways, footways, causeways, churchyards, or pavements, which now are or may hereafter be paved, repaired, or cleansed, broken up, or diverted, under or by virtue of the provisions of any local or personal act or acts of Parliament: And whereas it is deemed expedient to amend the said provisions in the said act, and to extend the same to turnpike roads in England: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, wherever a railroad crosses or shall hereafter cross any turnpike-road or any highway or statute labour road for carts or carriages in Great Britain, the proprietors or directors of the company of proprietors of the said railroad shall make and maintain good and sufficient gates across each end of such turnpike or other road as aforesaid at each of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages, passing along such turnpike or highway shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railroad (*c*); and any complaint for any neglect in respect of the said gates shall be made within one calendar month after the said neglect to any justice of the peace, or, if in Scotland, to the sheriff of the county, who may summon the party so complained against to appear before them or him at the next petty session or court to be holden for the district or division within which such gates are situate, who shall hear and decide upon the said complaint; and the proprietor or director so offending shall for each and every day of such neglect forfeit any sum not exceeding five pounds, together with such costs as to the justices or sheriff depute aforesaid before whom the conviction shall take place shall seem fit.

Proprietors of railroad to maintain gates where any railroad crosses the highways, &c.

Penalty 5*l.* for each day's neglect.

How penalties shall be recovered and applied.

II. And be it further enacted, That the penalties by this act imposed, and the costs to be allowed and ordered by the authority of this act, shall, in England, be recovered and applied in the same manner as any penalties and costs under the said act, and, in Scotland, shall be recovered and applied to the maintenance of

(*c*) See 5 & 6 Vict. c. 55, sect. 9, post.

the statute labour roads within the district where the offence is committed.

III. And be it further enacted, That this act shall commence and take effect from and after the thirtieth day of September, one thousand eight hundred and thirty-nine. Commencement of act.

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3 & 4 VICT. CAP. 97.

An Act for regulating Railways. [10*th August*, 1840.

Whereas it is expedient for the safety of the public to provide for the due supervision of railways; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, *That after two months from the passing of this act, no railway, or portion of any railway, shall be opened for the public conveyance of passengers or goods until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the Lords of the Committee of her Majesty's Privy Council appointed for trade and foreign plantations* (*d*). No railway to be opened without notice to the Board of Trade.

II. *And be it enacted, That, if any railway, or portion of any railway, shall be opened without due notice as aforesaid, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open, until the expiration of one calendar month after the company shall have given the like notice as is hereinbefore required before the opening of the railway; and any such penalty may be recovered in any of her Majesty's courts of record* (*e*). Penalty for opening railways without notice.

III. And be it enacted, That the Lords of the said committee may order and direct every railway company to make up and deliver to them returns, according to a form to be provided by the Lords of the said committee, of the aggregate traffic in passengers, according to the several classes, and of the aggregate traffic in cattle and goods respectively, on the said railway, as well as of all accidents which shall have occurred thereon attended with personal injury, and also a table of all tolls, rates, and charges from time to time levied on each class passengers, and on cattle and goods, conveyed on the said railway; and, if the returns herein specified shall not be delivered within thirty days after the same shall have been required, every such company shall forfeit to her Majesty the sum of twenty pounds for every day during which the said company shall wilfully neglect to deliver the same; and every such penalty may be recovered in any of her Majesty's courts of record: provided always, that such returns shall be required, in like manner and at the same time, from all the said companies, unless the Lords of the said committee shall specially exempt any of the said companies, and shall enter the grounds of such exemption in the minutes of their proceedings. Returns to be made by railway companies. See act 5 & 6 Vict c. 55, ss. 7, 8.

IV. And be it enacted, That every officer of any company who shall wilfully make any false return to the Lords of the said committee shall be deemed guilty of a misdemeanor. Penalty for making false returns.

(*d*) Recommended in the Second Report of 1839.

(*e*) Sects. 1 and 2 are repealed, and other enactments substituted by 5 & 6 Vict. c. 55, sect. 3, and following sections, post.

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Board of Trade may appoint persons to inspect railways.

V. And be it enacted, That it shall be lawful for the Lords of the said committee, if and when they shall think fit, to authorize any proper person or persons to inspect any railway (*f*); and it shall be lawful for every person so authorized, at all reasonable times, upon producing his authority, if required, to enter upon and examine the said railway, and the stations, works, and buildings, and the engines and carriages belonging thereto (*g*): *Provided always, that no person shall be eligible to the appointment as inspector as aforesaid who shall, within one year of his appointment, have been a director, or have held any office of trust or profit under any railway company* (*h*).

Penalty on persons obstructing inspector.

VI. And be it enacted, That every person wilfully obstructing any person, duly authorized as aforesaid, in the execution of his duty, shall, on conviction before a justice of the peace having jurisdiction in the place where the offence shall have been committed, forfeit and pay for every such offence any sum not exceeding ten pounds; and, on default of payment of any penalty so adjudged, immediately, or within such time as the said justice of the peace shall appoint, the same justice, or any other justice having jurisdiction in the place where the offender shall be or reside, may commit the offender to prison for any period not exceeding three calendar months; such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner.

Copies of existing bye-laws to be laid before the Board of Trade;

VII. And whereas many railway companies are or may hereafter be empowered by act of Parliament to make bye-laws, orders, rules, or regulations, and to impose penalties for the enforcement thereof, upon persons other than the servants of the said companies, and it is expedient that such powers should be under proper control (*i*), be it enacted, That true copies of all such bye-laws, orders, rules, and regulations, made under any such powers by every such company before the passing of this act, certified in such manner as the Lords of the said committee shall from time to time direct, shall, within two calendar months after the passing of this act, be laid before the Lords of the said committee (*k*); and that every such bye-law, order, rule, or regulation, not so laid before the Lords of the said committee within the aforesaid period, shall, from and after that period, cease to have any force or effect, saving in so far as any penalty may have been then already incurred under the same.

otherwise to be void.

No future bye-laws to be valid till two calendar months after they have been laid before the Board of Trade.

VIII. And be it enacted, That no such bye-law, order, rule, or regulation made under any such power, and which shall not be in force at the time of the passing of this act, and no order, rule, or regulation annulling any such existing bye-law, rule, order, or regulation which shall be made after the passing of this act, shall have any force or effect until two calendar months after a true copy of such bye-law, order, rule, or regulation, certified as aforesaid, shall have been laid before the Lords of the said committee, unless the Lords of the said committee shall, before such period, signify their approbation thereof.

Board of Trade may disallow bye-laws.

IX. And be it enacted, That it shall be lawful for the Lords of the said committee, at any time either before or after any bye-law, order,

(*f*) Founded on third report of 1840.

(*g*) Extended by 7 & 8 Vict. c. 85, sect. 15, post.

(*h*) Repealed by 7 & 8 Vict. c. 85, sect. 15, post.

(*i*) Founded on second report of 1839.

(*k*) Founded on third report of 1840.

rule, or regulation shall have been laid before them as aforesaid shall have come into operation, to notify to the company who shall have made the same, their disallowance thereof, and, in case the same shall be in force at the time of such disallowance, the time at which the same shall cease to be in force; and no bye-law, order, rule, or regulation which shall be so disallowed shall have any force or effect whatsoever, or, if it shall be in force at the time of such disallowance, it shall cease to have any force or effect at the time limited in the notice of such disallowance, saving in so far as any penalty may have been then already incurred under the same.

Provisions of railway acts requiring confirmation of bye-laws repealed.

X. And be it enacted, That so much of every clause, provision, and enactment in any act of Parliament heretofore passed as may require the approval or concurrence of any justice of the peace, court of quarter sessions, or other person or persons, other than members of the said companies, to give validity to any bye-laws, orders, rules, or regulations made by any such company, shall be repealed.

Board of Trade may direct prosecutions to enforce provisions of railway acts.

XI. *And be it enacted* (*l*), *That, whenever it shall appear to the Lords of the said committee that any of the provisions of the several acts of Parliament regulating any of the said companies, or the provisions of this act, have not been complied with on the part of any of the said companies, or any of their officers, and that it would be for the public advantage that the due performance of the same should be enforced, the Lords of the said committee shall certify the same to her Majesty's Attorney-General for England or Ireland, or to the Lord Advocate for Scotland as the case may require; and thereupon the said Attorney-General or Lord Advocate shall, by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding, as the case may require, proceed to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ under the provisions of the said acts: Provided always, that no such certificate as aforesaid shall be given by the Lords of the said committee until twenty-one days after they shall have given notice of their intention to give the same to the company against or in relation to whom they shall intend to give the same* (*m*).

Notice to be given to the company.

Prosecutions to be under sanction of Board of Trade, and within one year after the offence.

XII. And be it enacted, That no legal proceedings shall be commenced under the authority of the Lords of the said committee against any railway company for any offence against this act, or any of the several acts of Parliament relating to railways, except upon such certificate of the Lords of the said committee as aforesaid, and within one year after such offence shall have been committed (*n*).

Punishment of servants of railway companies guilty of misconduct.

XIII. And be it enacted, That it shall be lawful for any officer, or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine-driver, guard, porter, or other servant in the employ of such company who shall be found drunk while employed upon the railway, or commit any offence against any of the bye-laws, rules, or regulations of such company, or shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon the railway belonging

(*l*) Founded on Third Report, 1840.

(*m*) Repealed by 7 & 8 Vict. c. 85, sect. 16, and other provisions substituted by sects. 17 and 18, post.

(*n*) This enactment is repeated in 7 & 8 Vict. c. 85, sect. 18.

to such company, or the works thereof respectively, shall be or might be injured or endangered, or whereby the passage of any of the engines, carriages, or trains, shall be or might be obstructed or impeded, and to convey such engine-driver, guard, porter, or other servant so offending, or any person counselling, aiding, or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this act (*o*), and every such person so offending, and every person counselling, aiding, or assisting therein as aforesaid, shall, when convicted before such justice as aforesaid, (who is hereby authorized and required, upon complaint to him made, upon oath, without information in writing, to take cognisance thereof, and to act summarily in the premises), in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calender months, or, in the like discretion of such justice, shall for every such offence forfeit to her Majesty any sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned, with or without hard labour as aforesaid, for such period, not exceeding two calendar months, as such justice shall appoint; such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner (*p*).

Justice of the peace empowered to send any case to be tried by the quarter sessions.

XIV. Provided always and be it enacted, That (if upon the hearing of any such complaint he shall think fit) it shall be lawful for such justice, instead of deciding upon the matter of complaint summarily, to commit the person or persons charged with such offence for trial for the same at the quarter sessions for the county or place wherein such offence shall have been committed, and to order that any such person so committed shall be imprisoned and detained in any of her Majesty's gaols or houses of correction in the said county or place in the mean time, or to take bail for his appearance, with or without sureties, in his discretion; and every such person so offending, and convicted before such court of quarter sessions as aforesaid (which said court is hereby required to take cognisance of and hear and determine such complaint), shall be liable, in the discretion of such court, to be imprisoned, with or without hard labour, for any term not exceeding two years.

Punishment of persons obstructing railway.

XV. And be it enacted, That from and after the passing of this act, every person who shall wilfully do or cause to be done anything in such manner as to obstruct any engine or carriage using any railway, or to endanger the safety of persons conveyed in or upon the same, or shall aid or assist therein, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court before which he shall have been convicted, to be imprisoned, with or without hard labour, for any term not exceeding two years.

For punishment of persons obstructing the officers of any railway company, or trespassing upon any railway.

XVI. And be it enacted, That if any person shall wilfully obstruct or impede any officer or agent of any railway company in the execution of his duty upon any railway, or upon or in any of the stations or other works or premises connected therewith, or if any person shall wilfully trespass upon any railway, or any of the stations or

(*o*) Founded on Second Report, 1839.

(*p*) The provisions of this section are extended by 5 & 6 Vict. c. 55, sect. 17, post.

other works or premises connected therewith, and shall refuse to quit the same upon request to him made by any officer or agent of the said company, every such person so offending, and all others aiding or assisting therein, shall and may be seized and detained by any such officer or agent, or any person whom he may call to his assistance, until such offender or offenders can be conveniently taken before some justice of the peace for the county or place wherein such offence shall be committed, and when convicted before such justice as aforesaid, (who is hereby authorized and required, upon complaint to him upon oath, to take cognisance thereof and to act summarily in the premises), shall in the discretion of such justice, forfeit to her Majesty any sum not exceeding five pounds, and in default of payment thereof shall or may be imprisoned for any term not exceeding two calendar months, such imprisonment to be determined on payment of the amount of the penalty.

Proceedings not to be quashed for want of form, or removed into the superior courts.

XVII. And be it enacted, That no proceeding to be had and taken in pursuance of this act shall be quashed or vacated for want of form, or be removed by certiorari, or by any other writ or process whatsoever, into any of her Majesty's courts of record at Westminster or elsewhere, any law or statute to the contrary notwithstanding.

Repeal of all provisions in railway acts that empower two justices to decide disputes respecting the proper places for openings in the ledges or flanches of railways.

XVIII. And whereas many railway companies are bound, by the provisions of the acts of Parliament by which they are incorporated or regulated, to make, at the expense of the owner or occupier of lands adjoining the railway, openings in the ledges or flanches thereof, (except at certain places on such railway in the said act specified), for effecting communications between such railway and any collateral or branch railway to be laid down over such lands, and any disagreement or difference which shall arise as to the proper places for making any such openings in the ledges or flanches is by such acts directed to be referred to the decision of any two justices of the peace within their respective jurisdictions; and whereas it is expedient that so much of every clause, provision, and enactment in any act of Parliament heretofore passed, as gives to any justice or justices the power of hearing or deciding upon any such disagreement or difference as to the proper places for any such openings in the ledges or flanches of any railway, should be repealed; be it therefore enacted, that so much of every such clause, provision, and enactment as aforesaid, shall be repealed.

Board of Trade to determine such disputes in future.

XIX. And be it enacted, That in case any disagreement or difference shall arise between any such owner or occupier, or other persons, and any railway company, as to the proper places for any such openings in the ledges or flanches of any railway, (except at such places as aforesaid), for the purpose of such communication, then the same shall be left to the decision of the Lords of the said committee, who are hereby empowered to hear and determine the same in such way as they shall think fit, and their determination shall be binding on all parties(*q*).

Communications to the Board to be left at their office.

Communications by the Board, how to be authenticated.

XX. And be it enacted, That all notices, returns, and other documents required by this act to be given to or laid before the Lords of the said committee, shall be delivered at or sent by the post to the office of the Lords of the said committee; and all notices, appointments, requisitions, certificates, or other documents in writing, signed by one of the secretaries of the said committee, or by some officer

(*q*) Founded on Second Report, 1839.

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What shall be deemed good service on railway company.

appointed for that purpose by the Lords of the said committee, and purporting to be made by the Lords of the said committee, shall, for the purposes of this act, be deemed to have been made by the Lords of the said committee; and service of the same upon any one or more of the directors of any railway company, or on the secretary or clerk of the said company, or by leaving the same with the clerk or officer at one of the stations belonging to the said company, shall be deemed good service upon the said company.

Meaning of the words "railway" and "company."

XXI. And be it enacted, That wherever the word "railway" is used in this act it shall be construed to extend to all railways constructed under the powers of any act of Parliament, and intended for the conveyance of passengers in or upon carriages drawn or impelled by the power of steam or by any other mechanical power; and wherever the word "company" is used in this act, it shall be construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors, administrators, and assigns, unless the subject or context be repugnant to such construction.

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5 & 6 VICT. CAP. 55.

An Act for the better Regulation of Railways, and for the Conveyance of Troops. [30*th July*, 1842.

3 & 4 Vict c. 97.

Whereas by an act passed in the third and fourth years of the reign of her present Majesty, intituled "An Act for regulating Railways," provision was made for the supervision of railways; and whereas it is expedient for the safety of the public to make further provision for that purpose; be it enacted by the Queen's most excellent Majesty, by and with the advice and Consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this act shall come into operation on the passing thereof.

Commencement of act.

Recited act and this act to be construed together.

II. And be it enacted, That the provisions of the said recited act and of this act shall be construed together as one act, except so far as the provisions of the said recited act are hereby repealed, or shall be inconsistent with the provisions of this act.

Notice before opening railway repealed.

III. "And whereas by the said recited act it is enacted, That after two months from the passing of the said recited act, no railway or portion of any railway, shall be opened for the public conveyance of passengers or goods until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the Lords of the committee of her Majesty's Privy Council appointed for trade and foreign plantations; and whereas by the said recited act it is also enacted, that if any railway or portion of any railway shall be opened without due notice as aforesaid, the company to whom such railway shall belong shall forfeit to her majesty the sum of twenty pounds for every day during which the same shall continue open, until the expiration of one calendar month after the company shall have given the like notice as is hereinbefore required before the opening of the railway, and any such penalty may be recovered in any of her Majesty's courts of record;" be it enacted, that the said recited provisions of the said act shall be and they are hereby repealed.

Notice of intended opening of railway.

IV. And be it enacted, That no railway or portion of any railway shall be opened for the public conveyance of passengers until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the Lords of the committee of her Majesty's Privy Council appointed for trade and foreign plantations, and until ten days after notice in writing shall have been given by the said company to the Lords of the said committee of the time when the said railway or portion of railway will be, in their opinion, sufficiently completed for the safe conveyance of passengers, and ready for inspection (*r*).

If railway opened without notice, company to forfeit 20*l*.

V. And be it enacted, That if any railway or portion of any railway shall be opened without such notice as aforesaid, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open until the said notices shall have been duly given and shall have expired; and every such penalty may be recovered in any of her Majesty's courts of record, or in the court of session or in any of the sheriff's courts in Scotland.

Board of Trade empowered to postpone the opening.

VI. And be it enacted, That if the officer or officers appointed by the Lords of the said committee to inspect any such railway or portion of railway shall, after inspection thereof, report in writing to the Lords of the said committee that, in his or their opinion, the opening of the same would be attended with danger to the public using the same, by reason of the incompleteness of the works or permanent way, or the insufficiency of the establishment for working such railway, together with the grounds of such opinion, it shall be lawful for the Lords of the said committee, and so from time to time, as often as such officers shall, after further inspection thereof, so report, to order and direct the company to whom such railway shall belong, to postpone such opening for any period not exceeding one calendar month at any one time, until it shall appear to the Lords of the said committee that such opening may take place without danger to the public; and if any such railway, or any portion thereof, shall be opened contrary to any such order and direction of the Lords of the said committee, the company to whom such railway shall belong shall forfeit to her Majesty the sum of twenty pounds for every day during which the same shall continue open contrary to such order and direction; and any such penalty may be recovered in any of her Majesty's courts of record, or in the Court of Session, or in any of the sheriffs' courts in Scotland: Provided always, that no such order as aforesaid shall be binding upon any railway company unless therewith shall be delivered to the said company a copy of the report of the officer or officers on which such order shall be founded.

Notice of accidents to be given to the Board of Trade.

VII. And be it enacted, that every railway company shall, within forty-eight hours after the occurrence upon the railway belonging to such company of any accident attended with serious personal injury to the public using the same, give notice thereof to the Lords of the said committee; and if any company shall wilfully omit to give such notice, every such company shall forfeit to her Majesty the sum of five pounds for every day during which the omission to give the same shall continue; and every such penalty may be recovered in any of

(*r*) Founded on Second Report, 1839.

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her Majesty's courts of record, or in the Court of Session, or in any of the sheriffs' courts in Scotland.

oard of Trade powerced to ect returns.

VIII. And be it enacted, that the Lords of the said committee may order and direct any railway company to make up and deliver to them returns of serious accidents occurring in the course of the public traffic upon the railway belonging to such company, whether attended with personal injury or not, in such form and manner as the Lords of the said committee shall deem necessary and require for their information with a view to the public safety (*s*); and if any such returns shall not be so delivered within fourteen days after the same shall have been required, every such company shall forfeit to her Majesty the sum of five pounds for every day during which the said company shall neglect to deliver the same; and every such penalty may be recovered in any of her Majesty's courts of record, or in the courts of session, or in any of the sheriffs' courts in Scotland: Provided always, that all such returns shall be privileged communications, and shall not be evidence in any court whatsoever.

ites at level ossings to be pt closed across e road. & 3 Vict. c. 45.

IX. And whereas by an act passed in the second and third years of her present Majesty, and intituled "An Act to amend an Act of the Fifth and Sixth years of his late Majesty King William the Fourth, relating to Highways," it was enacted, that, whenever a railway crosses, or shall hereafter cross, any turnpike road, or any other highway or statute labour road for carts or carriages in Great Britain, the proprietors or directors of the said railway shall make and maintain good and sufficient gates across each end of such turnpike, or other road at each end of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along such turnpike or other road shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railway. And whereas by the acts relating to certain railways it is provided, that such gates shall be kept constantly closed across the railway, except during the time when carriages or engines passing along the railway shall have to cross such turnpike or other road: And whereas experience has shewn that it is more conducive to safety that such gates should be kept closed across the turnpike or other road instead of across the railway: Be it therefore enacted, that, notwithstanding anything to the contrary contained in any act of Parliament heretofore passed, such gates shall be kept constantly closed across each end of such turnpike or other roads, in lieu of across the railway, except during the time when horses, cattle, carts, or carriages passing along such turnpike or other road, shall have to cross such railway; and such gates shall be of such dimensions, and so constructed as, when closed across the ends of such turnpike or other roads, to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway, while the gates are closed: Provided always, that it shall be lawful for the Lords of the said committee, in any case in which they are satisfied that it will be more conducive for the public safety that the gates at any level crossing over any such turnpike or other road should be kept closed across the railway, to order and direct that such gates shall be kept so closed instead of across the road; and such order of the Lords of the said committee shall be a sufficient authority for the directors or proprietors of any railway company to whom such order is addressed, for

Proviso.

(*s*) Founded on Third Report 1840.

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keeping such gates closed, in the manner directed by the Lords of the said committee (*t*).

Railway companies to erect and maintain fences.

X. And whereas it is expedient that further provision be made for the safety of the public in respect of the fences of railways (*t*). Be it enacted, That all railway companies shall be under the same liability of obligation to erect, and to maintain and repair, good and sufficient fences throughout the whole of their respective lines, as they would have been if every part of such fences had been originally ordered to be made under an order of justices, by virtue of the provisions to that effect in the acts of Parliament relating to such railways respectively.

Disputes between connecting railways to be decided by the Board of Trade.

XI. And be it enacted, That where two or more railway companies whose railways have a common terminus or a portion of the same line of rails in common, or which form separate portions of one continued line of railway communication, shall not be able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, it shall be lawful for the Lords of the said committee, upon the application of either of the parties, to decide the questions in dispute between them, so far as the same relate to the safety of the public, and to order and determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by either of the parties respectively; and if any railway company shall refuse or wilfully neglect to obey any such order made upon or against such company by the Lords of the said committee pursuant to this provision, such company shall forfeit to her Majesty the sum of twenty pounds per day for every day during which such refusal or neglect shall continue; and every such penalty may be recovered in any of her Majesty's courts of record, or in the court of session, or in any of the sheriffs' courts in Scotland.

Powers of making branch communication with railways, and of entering upon them with locomotive engines, to be regulated by the Board of Trade.

XII. And whereas powers of laying down branch lines opening into the ledges or flanches of main lines of railway, and of entering upon and passing along such main lines with carriages and waggons drawn by locomotive engines, or by other mechanical or animal power, and also powers to form roads or railways across existing railways on a level, have been given by various acts relative to railways, to the owners or occupiers of lands adjoining the railway, and to other persons with their consent; and whereas experience has shewn that the exercise of such powers without limitation would in many cases be attended with danger to the public using such railway (*u*), be it therefore enacted, That if, in the case of any railway on which passengers are conveyed by steam or other mechanical power, it shall appear to the Lords of the said committee that such power as aforesaid cannot be so exercised without seriously endangering the public safety, and that an arrangement may be made with a due regard to existing rights of property, it shall be lawful for the Lords of the said committee to order and direct that such powers shall only be exercised subject to such conditions as the Lords of the said committee shall direct: Provided always, that no railway shall be considered a passenger railway if two thirds or more of the gross annual revenue of such railway shall be derived from the carriage thereon of coals, ironstone, or other metals or minerals.

Defining a passenger railway.

(*t*) Founded on Second Report, 1839.
(*u*) Founded on Third Report, 1840.

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Alteration of dangerous level crossings.

XIII. And whereas in many cases railways have been made to cross turnpike roads, highways, and private roads and tramways on the level, and the companies to whom such railways belong would in some cases be willing, at their own expense, to carry such roads and tramways over or under such railways by means of a bridge or archway for the greater safety of the public, but have no authority so to do: And whereas it would promote the public safety if railway companies were enabled, under the sanction and authority of the Lords of the said committee, to substitute bridges or archways for such level crossings as aforesaid; be it therefore enacted, that in all cases where any railway company shall be willing, at their own expense, to carry any turnpike road, highway, or private road or tramway over or under their railway by means of a bridge or arch in lieu of crossing the same on the level, it shall be lawful for the Lords of the said committee, on the application of the said company, and after hearing the several parties interested, if it shall appear to the Lords of the said committee that such level crossing endangers the public safety, and that the proposal of the company does not involve any violation of existing rights or interests without adequate compensation, to give the said company full power and authority for removing the danger at their own expense, either by building a bridge, or by such other arrangement as the nature of the case shall require, subject to such conditions as the Lords of the said committee shall direct.

Power for railway companies to enter upon adjoining lands to repair accidents.

XIV. And whereas it is essential for the public safety, and also for the proper maintenance of railways in a state of efficiency for the public service, that railway companies should have the power, in case of accidents or slips happening, or being apprehended, to their cuttings and embankments or other works, to enter upon the lands adjoining their respective railways, for the purpose of repairing or renewing the same, and to do such works as may be necessary for the purpose; be it therefore enacted, That it shall be lawful for the Lords of the said committee to empower any railway company, in case of any accident or slip happening or being apprehended to any cutting, embankment, or other work belonging to them, to enter upon any lands adjoining their railway for the purpose of repairing or preventing such accident, and to do such works as may be necessary for the purpose: Provided always, that, in case of necessity, it shall be lawful for any railway company to enter upon such lands, and do such works as aforesaid, without having obtained the previous sanction of the Lords of the said committee; but in every such case such railway company shall, within forty-eight hours after such entry, make a report to the Lords of the said committee, specifying the nature of such accident or apprehended accident, and of the works necessary to be done; and such powers shall cease and determine if the Lords of the said committee shall, after considering the said report, certify that their exercise is not necessary for the public safety: Provided also, that such works shall be as little injurious to the said adjoining lands as the nature of the accident, or apprehended accident, will admit of, and shall be executed with all possible despatch; and full compensation shall be made to the owners and occupiers of such lands for the loss, or injury, or inconvenience sustained by them respectively by reason of such works; the amount of which compensation, in case of any dispute about the same, shall be settled in the same manner as cases of disputed compensation are directed to be settled by the acts relating to the railway on which such works may become necessary:

Provided always, that no land shall be taken permanently by any railway company for such works without a certificate from the Lords of the said committee, as hereinafter described.

Compulsory powers of taking land for the purposes of railways extended, where thought necessary for safety, by the Board of Trade.

XV. And whereas, by various acts relating to railways, compulsory powers are given to railway companies of purchasing and taking lands for the construction of such railways, and it is provided, that such compulsory powers shall not be exercised after the expiration of certain limited periods from the passing of the said acts; and whereas it is sometimes found necessary for the public safety that additional land shall be taken after the expiration of such periods, for the purpose of giving increased width to the embankments, and inclination to the slopes of railways, or for making approaches to bridges or archways, or for doing such works for the repair or prevention of accidents as are hereinbefore described; be it therefore enacted, That in every case in which the Lords of the said committee shall certify that the public safety requires additional land to be taken by any railway company for such purposes as aforesaid, the compulsory powers of purchasing and taking land contained in the act or acts of such railway company, together with all the clauses and provisions relative thereto, shall, as regards such portion or portions of land as are mentioned in the certificate of the Lords of the said committee, revive and be in full force for such further period as shall be mentioned in such certificate: provided always, that any railway company applying to the Lords of the said committee for any such certificate shall give fourteen days' notice in writing, in the manner prescribed by the act or acts of such company for serving notices on land-owners, of their intention to make such application to all the parties interested in such lands, or such of them as shall be known to the company, and shall state in such notice the particulars of the lands required; and if any of such parties interested shall apply within the said period of fourteen days to the Lords of the said committee, such party shall be heard by them before any such certificate is given: provided also, that where any such application shall have been made by any railway company to the Lords of the said committee, upon which application any such certificate shall have been refused, the directors of such railway company shall, if required by the Lords of the said committee, repay to the party resisting such application any expenses which he or they may have incurred in resisting such application.

Carriages of greater weight than four tons may be used on railways.

XVI. And whereas, by various acts relating to railways, it is enacted, that no carriage or waggon shall carry or bear at any one time, upon the railway (including the weight of such carriage) more than four tons, and experience has shewn that it is in many cases more conducive to safety to use a heavier description of carriage or waggon upon railways than was originally contemplated; be it therefore enacted, That every provision contained in any such act or acts respectively limiting the weight to be carried or borne at any one time in any carriage or waggon upon any railway (including the weight of such carriage or waggon) to four tons, shall be and the same is hereby repealed; and that, notwithstanding any thing in any act contained, it shall be lawful for any railway company to use, and to permit to be used, upon any railway carriages or waggons carrying or bearing (including the weight of such carriage) a greater weight than four tons subject to such regulations as may from time to time be made and be in force pursuant to any act or acts of Parliament already or hereafter to be passed in that behalf.

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unishment of rsons employed railways guilty misconduct.

XVII. And whereas by the said recited act for regulating railways, provision is made for the punishment of servants of railway companies guilty of misconduct, and it is expedient to extend such provision (*x*); be it enacted, That it shall be lawful for any officer or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine-driver, waggon-driver, guard, porter, servant, or other person employed by the said or by any other railway company, or by any other company or person, in conducting traffic upon the railway belonging to the said company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed upon the said railway, who shall commit any offence against any of the bye-laws, rules, or regulations of the said company, or who shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon such railway or the works thereof respectively shall be or might be injured or endangered, or whereby the passage of any engines, carriages, or trains, shall be or might be obstructed or impeded, and to convey such engine-driver, guard, porter, servant, or other person so offending, or any person counselling, aiding, or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this act; and every such person so offending, and every person counselling, aiding, or assisting therein as aforesaid, shall, when convicted upon the oath of one or more credible witness or witnesses before such justice as aforesaid (who is hereby authorized and required, upon complaint to him made upon oath, without information in writing, to take cognisance thereof and to act summarily in the premises), in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or, in the like discretion of such justice, shall for every such offence forfeit to her Majesty any sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned, with or without hard labour as aforesaid, for such period not exceeding two calendar months, as such justice shall appoint, such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner.

Sheriffs to have jurisdiction in Scotland.

XVIII. And be it enacted, That in all cases in which by the present or the said recited act for regulating railways, it is provided, that offenders shall be taken before one or more justices of the peace for the place within which the offence was committed, it shall be lawful, in case the offence is committed in Scotland, to take such offenders before the sheriff of the county, or other magistrate acting for the district within which such offence shall be committed, or where such offender shall be apprehended, without any warrant or authority other than this act; and such sheriff or magistrate is hereby empowered and required, on the application of the railway company, to proceed in all respects as if the words "sheriff or magistrate" had been substituted for the word "justice" in the said acts, and shall be entitled summarily, and without a jury, to execute the powers thereby and hereby committed to him.

Communications

XIX. And be it enacted, That all notices, returns, and other docu-

(*x*) Founded on Second Report, 1839.

ments required by this act or by the said recited act to be given to or laid before the Lords of the said committee shall be delivered at or sent by the post to the office of the Lords of the said committee; and all notices, requisitions, orders, regulations, appointments, certificates, certified copies, and other documents in writing, signed by one of the secretaries of the said committee, or by some officer appointed for that purpose by the Lords of the said committee, and purporting to be made by the Lords of the said committee, shall, for the purposes of this and of the said recited act, be deemed to have been made by the Lords of the said committee, and that in the absence of evidence to the contrary, without proof of the authority of the person signing the same or of the signature thereto; and service of the same at one of the terminal offices of any railway company on the secretary or clerk of the said company, or by sending the same by post addressed to him at such office, shall be deemed good service upon the said company.

to and from the Board of Trade, and service of notices, &c., on railway company.

XX. And be it enacted (*y*), That whenever it shall be necessary to move any of the officers or soldiers of her Majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the Secretary-at-War and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities (*z*).

Railway companies shall convey military and police forces at prices to be settled.

XXI. And be it enacted, That whenever the word "railway" is used in this or in the said recited act, it shall be construed to apply to all railways used or intended to be used for the conveyance of passengers in or upon carriages drawn or impelled by the power of steam or by any other mechanical power; and whenever the word "company" is used in this or in the said recited act, it shall be construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors, administrators, and assigns, unless in either of the above cases the subject or context be repugnant to such construction.

Meaning of the words "railway" and "company."

XXII. And be it enacted, That all penalties under this act, for the application of which no special provision is made, shall be recovered in the name and for the use of her Majesty, in the manner provided by the said recited act for regulating railways.

Application of penalties.

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7 & 8 VICT. CAP. 85.

An Act to attach certain Conditions to the Construction of future Railways authorized, or to be authorized, by any Act of the present or succeeding Sessions of Parliament; and for other Purposes in relation to Railways. [*9th August*, 1844.

Whereas it is expedient that the concession of powers for the establishment of new lines of railway should be subjected to such conditions as are hereinafter contained for the benefit of the public (*a*);

(*y*) Founded on Fourth Report, 1840.

(*z*) Amended by 7 & 8 Vict. c. 85, sect. 12, post, p. 32.

(*a*) Founded on Third Report, 1844.

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Punishment of persons employed on railways guilty of misconduct.

XVII. And whereas by the said recited act for regulating railways, provision is made for the punishment of servants of railway companies guilty of misconduct, and it is expedient to extend such provision (*x*); be it enacted, That it shall be lawful for any officer or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine-driver, waggon-driver, guard, porter, servant, or other person employed by the said or by any other railway company, or by any other company or person, in conducting traffic upon the railway belonging to the said company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed upon the said railway, who shall commit any offence against any of the bye-laws, rules, or regulations of the said company, or who shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon such railway or the works thereof respectively shall be or might be injured or endangered, or whereby the passage of any engines, carriages, or trains, shall be or might be obstructed or impeded, and to convey such engine-driver, guard, porter, servant, or other person so offending, or any person counselling, aiding, or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this act; and every such person so offending, and every person counselling, aiding, or assisting therein as aforesaid, shall, when convicted upon the oath of one or more credible witness or witnesses before such justice as aforesaid (who is hereby authorized and required, upon complaint to him made upon oath, without information in writing, to take cognisance thereof and to act summarily in the premises), in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or, in the like discretion of such justice, shall for every such offence forfeit to her Majesty any sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned, with or without hard labour as aforesaid, for such period not exceeding two calendar months, as such justice shall appoint, such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner.

Sheriffs to have jurisdiction in Scotland.

XVIII. And be it enacted, That in all cases in which by the present or the said recited act for regulating railways, it is provided, that offenders shall be taken before one or more justices of the peace for the place within which the offence was committed, it shall be lawful, in case the offence is committed in Scotland, to take such offenders before the sheriff of the county, or other magistrate acting for the district within which such offence shall be committed, or where such offender shall be apprehended, without any warrant or authority other than this act; and such sheriff or magistrate is hereby empowered and required, on the application of the railway company, to proceed in all respects as if the words "sheriff or magistrate" had been substituted for the word "justice" in the said acts, and shall be entitled summarily, and without a jury, to execute the powers thereby and hereby committed to him.

Communications

XIX. And be it enacted, That all notices, returns, and other docu-

(*x*) Founded on Second Report, 1839.

authorized to be made by any act previous to the present session; and that no branch or extension of less than five miles in length of any such line of railway shall be taken to be a new railway within the provisions of this act; and that the said option of purchase shall not be exercised as regards any branch or extension of any railway, without including such railway in the purchase, in case the proprietor thereof shall require that the same be so included.

Reservation to Parliament of the consideration of future policy in regard to the said options.

IV. And whereas it is expedient, that the policy of revision or purchase should in no manner be prejudged by the provisions of this act, but should remain for the future consideration of the legislature, upon grounds of general and national policy: And whereas it is not the intention of this act that, under the said powers of revision or purchase, if called into use, the public resources should be employed to sustain an undue competition against any independent company or companies; be it enacted, That no such notice as hereinbefore mentioned, whether of revision or purchase, shall be given until provision shall have been made by Parliament, by an act or acts to be passed in that behalf, for authorizing the guarantee or the levy of the purchase-money hereinbefore mentioned, as the case may be, and for determining, subject to the conditions hereinbefore mentioned, the manner in which the said options or either of them shall be exercised; and that no bill for giving powers to exercise the said options, or either of them, shall be received in either house of Parliament unless it be recited in the preamble to such bill that three months' notice of the intention to apply to Parliament for such powers has been given by the said Lords commissioners to the company or companies to be affected thereby.

Accounts to be kept, and to be open to inspection.

V. And be it enacted, That, from and after the commencement of the period of three years next preceding the period at which the option of revision or purchase becomes available, full and true accounts shall be kept of all sums of money received and paid on account of any railway within the provisions hereinbefore contained, (distinguishing, if the said railway shall be a branch railway or one worked in common with other railways, the receipts, and giving an estimate of the expenses on account of the said railway, from those on account of the trunk, line, or other railways), by the directors of the company to whom such railway belongs, or by whom the same may be worked; and every such railway company shall once in every half-year during the said period of three years, cause a half-yearly account in abstract to be prepared, shewing the total receipt and expenditure on account of the said railway for the half-year ending the thirtieth day of June and the thirty-first day of December respectively, or such other convenient days as shall in each case be directed by the said Lords commissioners, under distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified under the hands of two or more directors of the said railway company, and shall send a copy of the said account to the said Lords commissioners on or before the last days of August and February respectively, or such other days as shall in each case be directed by the said Lords commissioners, in each year; and it shall be lawful for the said Lords commissioners, if and when they shall think fit, to appoint any proper person or persons to inspect the accounts and books of the said company during the said period of three years; and it shall be lawful for any person so authorized, at all reasonable times, upon producing his authority, to

examine the books, accounts, vouchers, and other documents of the company at the principal office or place of business of the company, and to take copies or extracts therefrom.

Companies to provide one cheap train each way daily.

VI. And whereas it is expedient to secure to the poorer class of travellers the means of travelling by railway at moderate fares, and in carriages in which they may be protected from the weather (*b*); be it enacted, That on and after the several days hereinafter specified, all passenger railway companies which shall have been incorporated by any act of the present session, or which shall be hereafter incorporated, or which by any act of the present or any future session have obtained or shall obtain, directly or indirectly, any extension or amendment of the powers conferred on them respectively by their previous acts, or have been or shall be authorized to do any act unauthorized by the provisions of such previous acts, shall, by means of one train at the least, to travel along their railway from one end to the other of each trunk, branch, or junction line belonging to or leased by them, so long as they shall continue to carry other passengers over such trunk, branch, or junction line, once at the least each way on every week-day, except Christmas-day and Good Friday (such exception not to extend to Scotland), provide for the conveyance of third-class passengers to and from the terminal and other ordinary passenger stations of the railway, under the obligations contained in their several acts of Parliament, and with the immunities applicable by law to carriers of passengers by railway; and also under the following conditions; (that is to say),

Such train shall start at an hour to be from time to time fixed by the directors, subject to the approval of the Lords of the Committee of Privy Council for Trade and Plantations:

Such train shall travel at an average rate of speed not less than twelve miles an hour for the whole distance travelled on the railway, including stoppages:

Such train shall, if required, take up and set down passengers at every passenger station which it shall pass on the line:

The carriages in which passengers shall be conveyed by such train shall be provided with seats, and shall be protected from the weather, in a manner satisfactory to the Lords of the said Committee:

The fare or charge for each third-class passenger by such train shall not exceed one penny for each mile travelled:

Each passenger by such train shall be allowed to take with him half a hundred weight of luggage, not being merchandise or other articles carried for hire or profit, without extra charge; and any excess of luggage shall be charged by weight, at a rate not exceeding the lowest rate of charge for passenger's luggage by other trains:

Children under three years of age, accompanying passengers by such train, shall be taken without any charge; and children of three years and upwards, but under twelve years of age, at half the charge for an adult passenger:

And with respect to all railways subject to these obligations, which shall be open on or before the first day of November next, these obligations shall come into force on the said first day of November; and with respect to all other railways subject to these obligations, they

(*b*) Founded on Third Report, 1844.

shall come into force on the day of opening of the railway, or the day after the last day of the session in which the act shall be passed by reason of which the company will become subject thereunto, which shall first happen.

Penalty for non-compliance.

VII. And be it enacted, That if any railway company shall refuse or wilfully neglect to comply with the provisions of this act as to the said cheap trains within a reasonable time, or shall attempt to evade the operation of such order, such company shall forfeit to her Majesty a sum not exceeding twenty pounds for every day during which such refusal, neglect, or evasion shall continue.

Board of Trade to have a discretionary power of allowing alternative arrangements.

VIII. Provided always, and be it enacted, That, except as to the amount of fare or charge for each passenger by such cheap trains, which shall in no case exceed the rates hereinbefore in such case provided, the Lords of the said committee shall have a discretionary power, upon the application of any railway company, of dispensing with any of the conditions hereinbefore required in regard to the conveyance of passengers by such cheap trains as aforesaid, in consideration of such other arrangements, either in regard to speed, covering from the weather, seats, or other particulars, as to the Lords of the said committee shall appear more beneficial and convenient for the passengers by such cheap trains under the circumstances of the case, and shall be sanctioned by them accordingly; and any railway company which shall conform to such other conditions as shall be so sanctioned by the Lords of the said committee shall not be liable to any penalty for not observing the conditions which shall have been so dispensed with by the Lords of the said committee, in regard to the said cheap trains and the passengers conveyed thereby.

When no tax to be levied.

IX. And be it enacted, That no tax shall be levied upon the receipts of any railway company from the conveyance of passengers at fares not exceeding one penny for each mile by any such cheap train as aforesaid.

Where companies run trains on the Sunday cheap trains to be likewise provided.

X. And be it enacted, That whenever any railway company subject to the hereinbefore-mentioned obligation of running cheap trains shall, from and after the days hereinbefore specified on which the said obligation is to accrue, run any train or trains on Sundays for the conveyance of passengers, it shall, under the obligations contained in its act or acts of Parliament, and with the immunities applicable by law to carriers of passengers by railway, by such train each way, on every Sunday, as shall stop at the greatest number of stations, provide sufficient carriages for the conveyance of third-class passengers at the terminal and other stations at which such Sunday train may ordinarily stop; and the fare or charge for each third-class passenger by such train shall not exceed one penny for each mile travelled.

Railway companies to afford additional facilities for the transmission of the mails. 1 & 2 Vict. c. 98.

XI. And whereas by an act passed in the second year of the reign of her Majesty, intituled "An Act to provide for the Conveyance of the Mails by Railways," provision was made for the transmission of the mails by railway, and it is expedient that such provision should be extended (*c*); be it enacted, That it shall be lawful for the Postmaster-General to require, in the manner and subject to the conditions as to payment for service performed prescribed by the said act, that the mails be forwarded upon any such railway as is hereinbefore last mentioned at any rate of speed which the Inspector-General of railways for the time being shall certify to be safe, not exceeding twenty-seven miles

(*c*) Founded on Third Report, 1844.

in the hour, including stoppages; and it shall be also lawful for the Postmaster-General to send any mail-guard with bags not exceeding the weight of luggage allowed to any other passenger (or subject to the general rules of the company for any excess of that weight) by any trains other than a mail train, upon the same conditions as any other passenger: Provided, that in such last-mentioned case nothing herein or in the last-recited act contained shall be construed to authorize the Postmaster-General to require the conversion of a regular mail train into an ordinary train, or to exercise any control over the company in respect of any ordinary train, nor shall the company be responsible for the safe custody or delivery of any mail bags so sent.

Certain companies to convey military and police forces at certain charges. 5 & 6 Vict. c. 55.

XII. And whereas by an act passed in the sixth year of the reign of her Majesty, intituled "An Act for the better Regulation of Railways, and for the Conveyance of Troops," it was among other things enacted, that, whenever it shall be necessary to move any of the officers or soldiers of her Majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices, or upon such conditions as may from time to time be contracted for between the Secretary-at-War and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance, signed by the proper authorities; and whereas it is expedient to amend such provision in regard to the prices and conditions of conveyance by any new railway, or any railway obtaining new powers from Parliament (*d*); be it enacted, That all railway companies which have been, or shall be incorporated by any act of the present or any future session, or which by any act of the present or any future session shall have obtained, or shall obtain any extension or amendment of the powers conferred by their previous acts, or any of them, or have been or shall be authorized to do any act unauthorized by the provisions of such previous acts, shall be bound to provide such conveyance as aforesaid for the said military, marine, and police forces, at fares not exceeding two-pence per mile for each commissioned officer proceeding on duty, such officer being entitled to conveyance in a first-class carriage, and not exceeding one penny for each mile for each soldier, marine, or private of the militia or police force, and also for each wife, widow, or child above twelve years of age of a soldier, entitled by act of Parliament, or by competent authority, to be sent to their destination at the public expense, children under three years of age so entitled being taken free of charge, and children of three years of age or upwards, but under twelve years of age, so entitled, being taken at half the price of an adult; and such soldiers, marines, and privates of the militia or police force, and their wives, widows, and children so entitled, being conveyed in carriages which shall be provided with seats, with sufficient space for the reasonable accommodation of the persons conveyed, and which shall be protected against the weather; provided, that every officer conveyed shall be entitled to take with him one hundred weight of personal luggage without extra charge, and every soldier, marine, private, wife, or widow, shall be entitled to take with him or her half a hundred weight of personal luggage without extra charge, all excess of the above weights of personal luggage being paid for at the rate of not more than

(*d*) Founded on Third Report, 1844.

one halfpenny per pound, and all public baggage, stores, arms, ammunition, and other necessaries and things, (except gunpowder and other combustible matters, which the company shall only be bound to convey at such prices and upon such conditions as may be from time to time contracted for between the Secretary at War and the company), shall be conveyed at charges not exceeding two-pence per ton per mile, the assistance of the military or other forces being given in loading and unloading such goods.

Companies to allow lines of electrical telegraph to be established.

XIII. And whereas electrical telegraphs have been established on certain railways, and may be more extensively established hereafter, and it is expedient to provide for their due regulation, be it enacted, That every railway company, on being required so to do by the Lords of the said committee, shall be bound to allow any person or persons authorized by the Lords of the said committee, with servants and workmen, at all reasonable times to enter into or upon their lands, and to establish and lay down upon such lands adjoining the line of such railway, a line of electrical telegraph for her Majesty's service, and to give to him and them every reasonable facility for laying down the same, and for using the same for the purpose of receiving and sending messages on her Majesty's service, subject to such reasonable remuneration to the company as may be agreed upon between the company and the Lords of the said committee, or in case of disagreement as may be settled by arbitration: Provided always, that, subject to a prior right of use thereof for the purposes of her Majesty, such telegraph may be used by the company for the purposes of the railway, upon such terms as may be agreed upon between the parties, or, in the event of difference, as may be settled by arbitration.

Electrical telegraph established by private parties to be open to the public.

XIV. And be it enacted (*e*), That where a line of electrical telegraph shall have been established upon any railway by the company to whom such railway belongs, or by any company, partnership, person or persons, otherwise than exclusively for her Majesty's service, or exclusively for the purposes of the railway, or jointly for both, the use of such electrical telegraph, for the purpose of receiving and sending messages, shall, subject to the prior right of use thereof for the service of her Majesty and for the purposes of the company, and subject also to such equal charges and to such reasonable regulations as may be from time to time made by the said railway company, be open for the sending and receiving of messages by all persons alike, without favour or preference.

Appointment of inspectors by Board of Trade. 3 & 4 Vict. c. 97.

XV. And whereas by an act passed in the fourth year of the reign of her Majesty, intituled "An Act to regulate Railways," power is given to the Lords of the said committee to appoint any proper person or persons to inspect any railway, and the stations, works, and buildings, and the engines and carriages belonging thereto; and in order to carry the provisions of this act into execution it is expedient that the said power be extended; be it enacted, That the said power given to the Lords of the said committee of appointing proper persons to inspect railways shall extend to authorize the appointment by the Lords of the said committee of any proper person or persons, for such purposes of inspection as are by the said act authorized, and also for the purpose of enabling the Lords of the said committee to carry the provisions of this and of the said act and of any general act relating

(*e*) Founded on Fifth Report, 1844.

to railways into execution; and that so much of the last-recited act as provides that no person shall be eligible to the appointment as inspector who shall, within one year of his appointment, have been a director, or have held any office of trust or profit under any railway company, shall be repealed: Provided always, that no person to be appointed as aforesaid shall exercise any powers of interference in the affairs of the company.

Repealing provision of 3 & 4 Vict. c. 97.

XVI. And whereas by the said act of the fourth year of the reign of her Majesty, intituled, "An Act for regulating Railways," it is among other things enacted, that whenever it shall appear to the Lords of the said committee that any of the provisions of the several acts of Parliament regulating any railway companies, or the provisions of that act, have not been complied with on the part of any of the said companies or any of their officers, and that it would be for the public advantage that the due performance of the same should be enforced, the Lords of the said committee shall certify the same to her Majesty's Attorney-General for England or Ireland, or to the Lord Advocate for Scotland, as the case may require; and thereupon the said Attorney-General or Lord Advocate shall, by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding (as the case may require), proceed to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ under the provisions of the said acts: Provided always, that no such certificate as aforesaid shall be given by the Lords of the said committee until twenty-one days after they shall have given notice of their intention to give the same to the company against or in relation to whom they shall intend to give the same: And whereas it is expedient that more effectual provision should be made, not only for enforcing a compliance on the part of railway companies with the provisions of their acts, but also for restraining railway companies from performing acts unauthorized by such provisions; be it enacted, that so much of the said act as is hereinbefore recited shall be repealed.

If railway companies contravene or exceed the provisions of their acts, or of any general act, the Board of Trade to certify the same to the Attorney-General, &c., who shall proceed against them.

XVII. And be it enacted (*f*), That whenever it shall appear to the Lords of the said committee that any of the provisions of the several acts of Parliament regulating any railway company, or the provisions of this act or of any general act relating to railways, have not been complied with on the part of any railway company or any of its officers, or that any railway company has acted or is acting in a manner unauthorized by the provisions of the act or acts of Parliament relating to such railway, or in excess of the powers given and objects defined by the said act or acts, and it shall also appear to the Lords of the said committee that it would be for the public advantage that the company should be restrained from so acting, the Lords of the said committee shall certify the same to her Majesty's Attorney-General for England or Ireland, or to the Lord Advocate for Scotland, as the case may require; and thereupon the said Attorney-General or Lord Advocate shall, in case such default of the railway company shall consist of non-compliance with the provisions of the act or acts relating thereto or of this act, or of any general act relating to railways, proceed by information, or by action, bill, plaint,

(*f*) Founded on Fifth Report, 1844.

suit at law or in equity, or other legal proceeding, as the case may require, to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ under the provisions of the said acts; and in case the default of the railway company shall consist in the commission of some act or acts unauthorised by law, then the said Attorney-General or Lord Advocate, upon receiving such certificate as aforesaid, shall proceed by suit in equity, or such other legal proceeding as the nature of the case may require, to obtain an injunction or order (which the judge in equity or other judge to whom the application is made shall be authorised and required to grant, if he shall be of opinion that the act or acts of the railway company complained of is or are not authorized by law) to restrain the company from acting in such illegal manner, or to give such other relief as the nature of the case may require.

Notice to be given to the company.

XVIII. Provided always, and be it enacted, That no such certificate as aforesaid shall be given by the Lords of the said committee until twenty-one days after they shall have given notice to the company against or in relation to whom they shall intend to give such certificate of their intention to give such certificate; and that no legal proceedings shall be commenced under the authority of the Lords of the said committee against any railway company for any offence against any of the several acts relating to railways or this act, or any general act relating to railways, except upon such certificate of the Lords of the said committee as aforesaid, and within one year after such offence shall have been committed.

Prosecutions to be under the sanction of the Board of Trade, and within one year after the offence.

Issue of loan notes and other illegal securities by railway companies prohibited.

XIX. And whereas many railway companies have borrowed money in a manner unauthorized by their acts of incorporation or other acts of Parliament relating to the said companies, upon the security of loan notes, or other instruments purporting to give a security for the repayment of the principal sums borrowed at certain dates, and for the payment of interest thereon in the meantime: And whereas such loan notes or other securities issued otherwise than under the provision of some act or acts of Parliament have no legal validity, and it is expedient that the issue of such illegal securities should be stopped; but such loan notes or other securities having been issued and received in good faith as between the borrower and lender, and for the most part for the lawful purposes of the undertaking, and in ignorance of their legal invalidity, it is expedient to confirm such as have been already issued (*g*); be it enacted, That from and after the passing of this act any railway company issuing any loan note or other negotiable or assignable instrument purporting to bind the company as a legal security for money advanced to the said railway company otherwise than under the provisions of some act or acts of Parliament authorizing the said railway company to raise such money and to issue such security, shall for every such offence forfeit to her Majesty a sum equal to the sum for which such loan note or other instrument purports to be such security: Provided always, that any company may renew any such loan note or other instrument issued by them prior to the passing of this act for any period or periods not exceeding five years from the passing of this act.

Loan notes already issued may be renewed.

(*g*) Founded on Fifth Report, 1844.

Loan notes already issued to be paid when due.

XX. And be it enacted, That where any railway company, before the twelfth day of July, One thousand eight hundred and forty-four, shall have issued or contracted to issue any such loan notes or other unauthorized instruments, the company may and shall pay off such loan notes or other instruments as the same may fall due, subject as herein-before provided; and until the same shall be so paid off the said loan notes or other instruments shall entitle the holders thereof to the payment by the company of the principal sum and interest thereby agreed to be paid.

Register of loan notes.

XXI. And be it enacted, That a register of all such loan notes or other instruments shall be kept by the secretary; and such register shall be open, without fee or reward, at all reasonable times, to the inspection of any shareholder or auditor of the undertaking, and of every person interested in any such loan note or other instrument, desirous of inspecting the same.

Remedy for recovery of tithe-rent charged on railway land.

XXII. And whereas the remedies now in force for the recovery of tithe commutation rent-charges are in many instances ineffectual for such parts thereof as are charged upon lands taken for the purposes of a railway, and it is therefore expedient to extend the said remedies when the said rent-charges may have been duly apportioned; be it enacted, That in all cases in which any such rent-charge, or part of any rent-charge, has been or hereafter shall be duly apportioned under the provisions of the acts for the commutation of tithes in England and Wales, upon lands taken or purchased by any railway company for the purposes of such company, or upon any part of such lands, it shall be lawful for every person entitled to the said rent-charge or parts of such rent-charge, in case the same has been or shall be in arrear and unpaid for the space of twenty-one days next after any half-yearly day fixed for the payment thereof, to distrain for all arrears of the said rent-charge upon the goods, chattels, and effects of the said company, whether on the land charged therewith, or any other lands, premises, or hereditaments of such company, whether situated in the same parish or elsewhere, and to dispose of the distress when taken, and otherwise to demean himself in relation thereto, as any landlord may for arrears of rent reserved on a lease for years: Provided always, that nothing herein contained shall give or be construed to give a legal right to such rent-charge, when but for this act such rent-charge was not or could not be duly apportioned.

Communications to and from Board of Trade, service of notices, &c.

XXIII. And be it enacted, That all notices, requisitions, orders, regulations, appointments, certificates, certified copies, and other documents in writing, signed by some officer appointed for that purpose by the Lords of the said committee, shall for the purposes of this act be deemed to have been made by the Lords of the said committee; and all certificates of anything done by the Lords of the said committee in relation to this act, and certified copies of the minutes of proceedings or correspondence of the Lords of the said committee in relation thereto, signed by such officer, shall be deemed sufficient evidence thereof; and that in the absence of evidence to the contrary, without proof of the authority of the person signing the same, or of the signature thereto, and service of the same at one of the principal offices of any railway company on the secretary or clerk of the said company, or by sending the same by post, addressed to him at such office, shall be deemed good service upon the said company; and all notices, returns, and other documents required by this act to be given to or laid before the Lords of the said committee, shall be

delivered at or sent by post addressed to the office of the Lords of the said committee.

Penalties.

XXIV. And be it enacted, That all penalties under this act for the application of which no special provision is made shall be recovered in the name and for the use of her Majesty, and may be recovered in any of her Majesty's courts of record, or in the court of session, or in any of the sheriff courts in Scotland.

Interpretation of act.

XXV. And be it enacted, That where the word "railway" is used in this Act, it shall be construed to extend to railways constructed under the powers of any act of Parliament; and when the words "passenger railway" are used in this act, they shall be construed to extend to railways constructed under the powers of any act of Parliament upon which one-third or more of the gross annual revenue is derived from the conveyance of passengers by steam or other mechanical power; and whenever the word "Company" is used in this act it shall be construed to extend to include the proprietors for the time being of any such railway; and that where a different sense is not expressly declared, or does not appear by the context, every word importing the singular number or the masculine gender shall be taken to include females as well as males, and several persons and things as well as one person or thing.

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7 & 8 VICT. CAP. 110.

An Act for the Registration, Incorporation, and Regulation of Joint-Stock Companies. [*5th September*, 1844.]

WHEREAS it is expedient to make provision for the due registration of joint-stock companies during the formation and subsistence thereof; and also, after such complete registration as is hereinafter mentioned, to invest such companies with the qualities and incidents of corporations, with some modifications, and subject to certain conditions and regulations; and also to prevent the establishment of any companies which shall not be duly constituted and regulated according to the provisions of this act: Now be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this act shall come into operation at the following times; that is to say, as to the officers to be appointed in pursuance hereof for the registration of companies, and the regulation of the office hereby provided for that purpose, immediately on the passing hereof; and as to all companies to which this act is to apply, and all other the provisions hereinafter contained, except such as relate to such officers and office as aforesaid, on the first day of November in the year one thousand eight hundred and forty-four.

Operation of act as to time.

Operation of act as to companies.

II. And be it enacted, That this act shall apply to every joint-stock company, as hereinafter defined, established in any part of the United Kingdom of Great Britain and Ireland except Scotland, or established in Scotland, and having an office or place of business in any other part of the United Kingdom, for any commercial purpose, or for any purpose of profit, or for the purpose of assurance or insurance (except banking companies, schools, and scientific and literary institutions, and also friendly societies, loan societies, and benefit

Loan notes already issued to be paid when due.

XX. And be it enacted, That where any railway company, before the twelfth day of July, One thousand eight hundred and forty-four, shall have issued or contracted to issue any such loan notes or other unauthorized instruments, the company may and shall pay off such loan notes or other instruments as the same may fall due, subject as herein-before provided; and until the same shall be so paid off the said loan notes or other instruments shall entitle the holders thereof to the payment by the company of the principal sum and interest thereby agreed to be paid.

Register of loan notes.

XXI. And be it enacted, That a register of all such loan notes or other instruments shall be kept by the secretary; and such register shall be open, without fee or reward, at all reasonable times, to the inspection of any shareholder or auditor of the undertaking, and of every person interested in any such loan note or other instrument, desirous of inspecting the same.

Remedy for recovery of tithe-rent charged on railway land.

XXII. And whereas the remedies now in force for the recovery of tithe commutation rent-charges are in many instances ineffectual for such parts thereof as are charged upon lands taken for the purposes of a railway, and it is therefore expedient to extend the said remedies when the said rent-charges may have been duly apportioned; be it enacted, That in all cases in which any such rent-charge, or part of any rent-charge, has been or hereafter shall be duly apportioned under the provisions of the acts for the commutation of tithes in England and Wales, upon lands taken or purchased by any railway company for the purposes of such company, or upon any part of such lands, it shall be lawful for every person entitled to the said rent-charge or parts of such rent-charge, in case the same has been or shall be in arrear and unpaid for the space of twenty-one days next after any half-yearly day fixed for the payment thereof, to distrain for all arrears of the said rent-charge upon the goods, chattels, and effects of the said company, whether on the land charged therewith, or any other lands, premises, or hereditaments of such company, whether situated in the same parish or elsewhere, and to dispose of the distress when taken, and otherwise to demean himself in relation thereto, as any landlord may for arrears of rent reserved on a lease for years: Provided always, that nothing herein contained shall give or be construed to give a legal right to such rent-charge, when but for this act such rent-charge was not or could not be duly apportioned.

Communications to and from Board of Trade, service of notices, &c.

XXIII. And be it enacted, That all notices, requisitions, orders, regulations, appointments, certificates, certified copies, and other documents in writing, signed by some officer appointed for that purpose by the Lords of the said committee, shall for the purposes of this act be deemed to have been made by the Lords of the said committee; and all certificates of anything done by the Lords of the said committee in relation to this act, and certified copies of the minutes of proceedings or correspondence of the Lords of the said committee in relation thereto, signed by such officer, shall be deemed sufficient evidence thereof; and that in the absence of evidence to the contrary, without proof of the authority of the person signing the same, or of the signature thereto, and service of the same at one of the principal offices of any railway company on the secretary or clerk of the said company, or by sending the same by post, addressed to him at such office, shall be deemed good service upon the said company; and all notices, returns, and other documents required by this act to be given to or laid before the Lords of the said committee, shall be

delivered at or sent by post addressed to the office of the Lords of the said committee.

Penalties.

XXIV. And be it enacted, That all penalties under this act for the application of which no special provision is made shall be recovered in the name and for the use of her Majesty, and may be recovered in any of her Majesty's courts of record, or in the court of session, or in any of the sheriff courts in Scotland.

Interpretation of act.

XXV. And be it enacted, That where the word "railway" is used in this Act, it shall be construed to extend to railways constructed under the powers of any act of Parliament; and when the words "passenger railway" are used in this act, they shall be construed to extend to railways constructed under the powers of any act of Parliament upon which one-third or more of the gross annual revenue is derived from the conveyance of passengers by steam or other mechanical power; and whenever the word "Company" is used in this act it shall be construed to extend to include the proprietors for the time being of any such railway; and that where a different sense is not expressly declared, or does not appear by the context, every word importing the singular number or the masculine gender shall be taken to include females as well as males, and several persons and things as well as one person or thing.

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7 & 8 VICT. CAP. 110.

An Act for the Registration, Incorporation, and Regulation of Joint-Stock Companies. [*5th September*, 1844.]

WHEREAS it is expedient to make provision for the due registration of joint-stock companies during the formation and subsistence thereof; and also, after such complete registration as is hereinafter mentioned, to invest such companies with the qualities and incidents of corporations, with some modifications, and subject to certain conditions and regulations; and also to prevent the establishment of any companies which shall not be duly constituted and regulated according to the provisions of this act: Now be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this act shall come into operation at the following times; that is to say, as to the officers to be appointed in pursuance hereof for the registration of companies, and the regulation of the office hereby provided for that purpose, immediately on the passing hereof; and as to all companies to which this act is to apply, and all other the provisions hereinafter contained, except such as relate to such officers and office as aforesaid, on the first day of November in the year one thousand eight hundred and forty-four.

Operation of act as to time.

Operation of act as to companies.

II. And be it enacted, That this act shall apply to every joint-stock company, as hereinafter defined, established in any part of the United Kingdom of Great Britain and Ireland except Scotland, or established in Scotland, and having an office or place of business in any other part of the United Kingdom, for any commercial purpose, or for any purpose of profit, or for the purpose of assurance or insurance (except banking companies, schools, and scientific and literary institutions, and also friendly societies, loan societies, and benefit

Application of term "joint-stock company."

building-societies, respectively duly certified and inrolled under the statutes in force respecting such societies, other than such friendly societies as grant assurances on lives to the extent hereinafter specified); and that the term "joint-stock company" shall comprehend,—

Every partnership whereof the capital is divided or agreed to be divided into shares, and so as to be transferable without the express consent of all the copartners; and also,

Every assurance company or association for the purpose of assurance or insurance on lives, or against any contingency involving the duration of human life, or against the risk of loss or damage by fire, or by storm or other casualty, or against the risk of loss or damage to ships at sea, or on voyage, or to their cargoes, or for granting or purchasing annuities on lives; and also every institution inrolled under any of the acts of Parliament relating to friendly societies, which institutions shall make assurances on lives, or against any contingency involving the duration of human life to an extent upon one life or for any one person to an amount exceeding two hundred pounds, whether such companies, societies, or institutions shall be joint-stock companies or mutual assurance societies, or both; and also,

Every partnership which at its formation, or by subsequent admission, (except any admission subsequent on devolution or other act in law), shall consist of more than twenty-five members:

Future companies.

And that, except where the provisions of this act are expressly applied to partnerships existing before the said first day of November, it shall be held to apply only to partnerships the formation of which shall be commenced after that date: Provided nevertheless, that,

Companies for executing Parliamentary works.

except as hereinafter specially provided, this act shall not extend to any company for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock which cannot be carried into execution without obtaining the authority of Parliament: Provided also, that,

Incorporated companies.

except as hereinafter is specially provided (*h*), this act shall not extend to any company incorporated, or which may be hereafter incorporated by statute or charter, nor to any company authorized or which may be hereafter authorized by statute or letters-patent to sue and be sued in the name of some officer or person.

Construction of words

III. And be it declared, That the following words and expressions are intended to have the meanings hereby assigned to them respect-

(*h*) It has already been observed that a question arises as to the force of these words. (See ante, p. 15, in the text). It is quite clear that a railway company must be registered provisionally (sect. 4); and completely (sect. 9); and sect. 25 points out what acts may be done by a railway company after complete registration; and the same section also seems *to require* the appointment of directors and auditors. By subsequent sections, the directors "of any joint-stock companies registered under this act" are required to do certain acts; (see sects. 27, 32, and 49); and, by other sections, directors "of a joint-stock company registered under this act" are put under certain disabilities. (See sects. 29, 30). These examples may suffice to illustrate the question which arises—i. e. whether these expressions include railway companies, notwithstanding the language used in the above section. See, on this subject, ante, p. 14, in the text, and post.

ively, so far as such meanings are not excluded by the context or by the nature of the subject matter; that is to say,

The word "company" to mean any joint-stock company or other institution, as before defined:

The expression "assurance company" to mean any assurance company, association, or institution, as before defined:

The word "directors" to mean the persons having the direction, conduct, management, or superintendence of the affairs of a company:

The expression "promoter" or "promoter of a company," to apply to every person acting by whatever name in the forming and establishing of a company at any period prior to the company obtaining a certificate of complete registration as hereinafter mentioned:

The word "subscriber" to mean any person who shall have agreed in writing to take or have taken any shares in a proposed company or in a company formed, and who shall not have executed the deed of settlement, or a deed referring thereto:

The word "shareholder (*i*)" to mean any person entitled to a share in a company, and who has executed the deed of settlement, or a deed referring to it, or, in the case of mutual assurance societies, any person who shall be an assured member thereof:

The word "person" to apply to bodies politic or corporate, whether sole or aggregate:

The expression "Commissioners of the Treasury" to apply to the Lord High Treasurer for the time being, or the commissioners of her Majesty's Treasury for the time being, or any three or more of them:

The expression "committee of Privy Council for trade" to mean the Lords of the committee of her Majesty's Privy Council for the consideration of all matters of trade and plantations:

The expression "secretary of the committee" to mean one of the joint assistant secretaries of the said committee of Privy Council for trade:

The word "justice" to mean a justice of the peace for the county, city, borough, liberty, or place where the matter requiring the cognizance of any justice shall arise, and who shall not be interested in the matter:

The expression "special authority" to mean any deed of settlement, bye-laws, letters-patent, charter, or local and personal act of Parliament, by which powers are conferred or regulations prescribed with reference to any individual company.

The word "prescribed" to mean provided for by special authority:

The word "month" to mean calendar month:

The expression "superior courts" to mean her Majesty's superior courts of law or equity in England or Ireland:

The word "occupation," when applied to any person, to mean his trade or following, and, if none, then his rank or usual title, as esquire, gentleman:

The expression "place of residence" to include the street, square, or place where the party shall reside, and the number (if any) or other designation of the house in which he shall so reside:

(*i*) See, as to the definition of the word "shareholder" in this clause, ante, page 14, in the text.

APPENDIX. STATUTES.

The word "oath" to include affirmation or other declaration lawfully substituted for an oath:

And generally, whensoever, with regard to any matter, or to any function in respect thereof, the name of an officer (whether a public officer or an officer of a company) ordinarily having cognizance of such matter, or ordinarily exercising such function, is mentioned, such reference is to be understood to apply as well to any other person or officer who may have cognizance of such matter, or exercise such function in respect of such matter:

And, subject as aforesaid to the context and to the nature of the subject matter, words denoting the singular number are to be understood to apply also to a plurality of persons or things, and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender.

Provisional registration.

IV. And be it enacted, That before proceeding to make public, whether by way of prospectus, handbill, or advertisement, any intention or proposal to form any company for any purpose within the meaning of this act, whether for executing any such work as aforesaid under the authority of Parliament (*k*), or for any other purpose, it shall be the duty of the promoters of such company, and they or some of them are hereby required to make to the office hereby provided for the registration of joint-stock companies, (and hereinafter called the Registry Office), returns of the following particulars according to the schedule (C.) hereunto annexed (*l*); that is to say,

Returns by promoters of companies.

1. The proposed name of the intended company; and also,
2. The business or purpose of the company; and also,
3. The names of its promoters (*m*), together with their respective occupations (*n*), places of business (if any), and places of residence (*o*);

And also the following particulars, either before or after such publication as aforesaid, when and as from time to time they shall be decided on; viz.

4. The name of the street, square, or other place in which the provisional place of business, or place of meeting shall be situate, and the number (if any) or other designation of the house or office; and also,
5. The names of the members of the committee or other body acting in the formation of the company, their respective occupations, places of business (if any), and places of residence, together with a written consent on the part of every such member or promoter to become such, and also a written agreement on the part of such member or promoter, entered into with some one or more persons as trustees for the said company, to take one or more shares in the proposed undertaking,

(*k*) This refers to the proviso in the second section, and shews that railway companies are brought within the operation of the fourth section. No doubt can exist on this point, because, by sects. 9 and 23, post, it is assumed that railway companies are required to be registered provisionally, under the above section.

(*l*) See the forms issued from the Registry Office, post.

(*m*) See this word defined, ante, sect. 2.

(*n*) See the word "occupation" defined, ante, sect. 2.

(*o*) See the words "place of residence" defined, ante, sect. 2.

which must be signed by the member or promoter whose agreement it purports to be (but such agreements need not be on a stamp); and also,

6. The names of the officers of the company and their respective occupations, places of business (if any), and places of residence; and also,

7. The names of the subscribers to the company, their respective occupations, places of business (if any), and places of residence; and also before it shall be circulated or issued to the public.

8. A copy of every prospectus or circular, handbill or advertisement, or other such document at any time addressed to the public, or to the subscribers or others, relative to the formation or modification of such company:

9 And afterwards, from time to time, until the complete registration of such company, a return of a copy of every addition to or change made in any of the above particulars:

Certificate of provisional registration.

And that upon such registration of at the least the three particulars first before mentioned, the promoters of such company shall be entitled to a certificate of provisional registration.

Penalty as to delaying registration.

V. And be it enacted, That if for a period of one month after the particulars hereby required to be registered, or any of them, shall have been ascertained or determined, the promoters of any company fail to register such particulars, then on conviction thereof, any promoter as aforesaid shall be liable to forfeit for every such offence a sum not exceeding twenty pounds.

Relief from penalties to promoters by the appointment of a solicitor to make returns.

VI. Provided always, and be it enacted, That if the promoters of a proposed company appoint a person, being an attorney or solicitor of one of her Majesty's superior courts of law or equity, to be solicitor for the promoters of such company, and return to the said registry office a duplicate of such appointment in writing (*p*), signed by some one or more of such promoters, together with a duplicate of the acceptance of such appointment, signed by the person so appointed, then, until a duplicate of the revocation or of the resignation of such appointment be returned in like manner, so signed as aforesaid, or until the decease of such solicitor, all returns by this act required to be made by such promoters shall be made by such solicitor in their behalf, and the penalty hereinbefore imposed in respect of any failure to make such returns shall not be incurred by them; and that if within the period of one month after the particulars hereby required to be registered, or any of them, shall have been ascertained or determined, such solicitor fail to make such returns, then he shall be liable to forfeit for every such offence a sum not exceeding twenty pounds; and that if it be made to appear to the court to which he shall belong that he fraudulently omitted to make a return of any such particulars, then he shall be liable to be suspended from practice for any time to be appointed by the said court, or to be struck off the rolls of the said court.

Return of appointment and acceptance.

Penalty on solicitor failing to make returns.

Complete registration.

VII. And be it enacted, That it shall not be lawful for any joint-stock company hereafter to be formed for any purpose within the meaning of this act, whether for executing any such work as aforesaid under the authority of Parliament, or for any other purpose, to act otherwise than provisionally in accordance with this

(*p*) See the forms issued from the Registry Office, post.

APPENDIX.

STATUTES.

Constitution of companies.

Provisions of deeds of settlements.

act until such company shall have obtained a certificate of complete registration as hereinafter provided; and no joint-stock company shall be entitled to receive a certificate of complete registration unless it be formed by some deed or writing under the hands and seals of the shareholders therein; and in or by such deed there must be appointed not less than three directors, and also one or more auditors; and such deed must set forth in a schedule thereto, in a tabular manner, according to the order hereinafter mentioned, the following particulars (*q*); that is to say,

1. The name of the company; and also,
2. The business or purpose of the company; and also,
3. The principal or only place for carrying on such business, and every branch office (if any); and also,
4. The amount of the proposed capital, and of any proposed additional capital, and the means by which it is to be raised; and where the capital shall not be money, or shall not consist entirely of money, then the nature of such capital and the value thereof shall be stated; and also,
5. The amount of money (if any) to be raised or authorized to be raised by loan; and also,
6. The total amount of the capital subscribed or proposed to be subscribed at the date of such deed; and also,
7. The division of the capital (if any) into equal shares, and the total number of such shares, each of which is to be distinguished by a separate number in a regular series; and also,
8. The names and occupations and (except bodies politic) the places of residence of all the then subscribers, according to the information possessed by the officers of the company in respect of such names and occupations and places of residence; and also,
9. The number of the shares which each subscriber holds, and the distinctive numbers thereof, distinguishing the numbers of the shares on which the deposit has been paid from those on which it has not been paid; and also,
10. The names of the then directors of the company, and of the then trustees of the company (if any), and of the then auditors of the company, together with their respective places of business (if any), occupations, and places of residence; and also,
11. The duration of the company, and the mode or condition of its dissolution:

Covenant to pay instalments on shares, &c.

Provision in deed for purposes in schedule (A).

And that such deed must contain a covenant on the part of every shareholder, with a trustee on the part of the company, to pay up the amount of the instalments on the shares taken by such shareholder, and to perform the several engagements in the deed contained

(*q*) By sect. 9, post, a railway company is to be registered provisionally, on returning to the registry office a copy of the deed of partnership or subscription contract, deposited in Parliament, in pursuance of the standing orders. The standing orders require that a subscription contract shall be entered into, to the amount of three-fourths of the estimate of the expense of the intended works, and that the subscribers shall bind themselves, their heirs, executors, and administrators, for the payment of the money subscribed; Lords' standing order, No. 224; commons' standing order, Nos. 29, 40; but they do not require that directors or auditors shall be appointed by these contracts.

art of the shareholders; and that such deed must also make
ı for such of the purposes set forth in schedule (A.) to this
xed as the nature and business of the company may require,
ıer with or without provision for such other purposes (not
:ent with law) as the parties to such deed shall think proper;
every such deed of settlement must be signed by at least one-
ı number of the persons who at the date of the deed have
subscribers, and who shall hold at least one-fourth of the
ım number of shares in the capital of the company; and that
.ch deed must be certified by two directors of the company,
.ng endorsed thereon in the form contained in the schedule
this act annexed; and that on the production of such deed,
'orth such matters and making such provisions as are hereby
ı to be provided for, and being so signed and certified, to-
rith a complete abstract or index thereof, to be previously
d by the registrar of joint-stock companies, and also a copy
deed, for the purpose of registering the same, or as soon after
oduction as conveniently may be, the registrar of joint-stock
ies shall grant a certificate of complete registration, according
rovisions of this act in that behalf; and unless such deed and
atters be so produced, and such conditions be so performed,
not be lawful for him to grant such certificate; and that
:h certificate shall be granted it shall be taken as evidence of
)er provisions being inserted in such deed, and of the perform-
the conditions hereby required previously to the granting
rtificate of complete registration; and that any defect or
ı as regards the matters hereby required in any deed of
:nt may from time to time be supplied by a supplementary
deeds; and that if any such supplementary deed be not
:tent with or repugnant to this act, or any act respecting
)ck companies, and if it be duly registered, then it shall have
ıe effect as if there were only one deed for the purposes of
; and that unless the same shall be registered it shall be of
: or effect.

Execution of deed of settlement.

Authentication of deed.

Registration of deed.

Supplementary deed.

. And be it enacted, That if any deed of settlement or supple-
y deed of settlement, whether made before or after the grant-
he certificate of complete registration, appear to such registrar
-stock companies to be insufficient by reason of the omission
mpleteness of any of the provisions therein contained for the
s set forth in the said schedule (A.), or if the deed contain
)ns which appear to such registrar to be inconsistent with or
ınt to this act, or any act for the time being in force respect-
ıt-stock companies, then as soon thereafter as conveniently
such registrar shall notify the same in writing to the persons
he company by whom the deed shall have been presented for
tion, specifying in such notification the particulars wherein
:ed of settlement or supplementary deed of settlement is
lete, or inconsistent with or repugnant to any such act as
d.

Notification of incompleteness of deeds of settlement.

Provided always, and be it enacted, That if any company for
ng any bridge, road, cut, canal, reservoir, aqueduct, water-
navigation, tunnel, archway, railway, pier, port, harbour,
ır dock, which cannot be carried into execution without the
ty of Parliament, deposit at the proper offices of the two
of Parliament, in compliance with the standing orders of such

Companies for executing Parliamentary works to register copies of documents required to be deposited by the standing orders.

APPENDIX.

STATUTES.

upon demand, to cause an acknowledgment of the receipt of such return or document to be given to the person by whom the same shall be so brought; and that if such returns or documents be conformable to the provisions of this act, or of any regulations in that behalf, then it shall be the duty of the registrar, and he is hereby required forthwith to register the same, and, on demand, to grant to such company a certificate of provisional or complete registration, as the case may require, signed by him, and sealed with the seal of his office; which certificate must set forth whether the company has been constituted provisionally or completely; and that, in the absence of evidence to the contrary, any such certificate, or a copy of any such return as aforesaid, shall be received in evidence, without proof of the signature thereto, or of the seal of office affixed thereto.

Certificates of registration.

Effect of certificate as evidence.

Authentication of returns.

XVI. And be it enacted, That until the company shall have obtained its certificate of complete registration, the promoters of the company, or their solicitor as aforesaid, shall make or cause to be made every return by this act required to be made; and after such company shall have obtained a certificate of complete registration the directors of the company shall make or cause to be made every such return; and one or more of such promoters, or their solicitor, or such directors, as the case may be, shall sign such return; and every such return which shall be made after complete registration of the company shall be sealed with the seal of the company.

Regulations as to returns.

XVII. And be it enacted, That if the committee of Privy Council for trade shall deem it expedient, then it shall be lawful for the said committee and they are hereby authorized from time to time to make regulations respecting the form of any such returns as are hereby directed to be made, and the manner and time of making them, and for those purposes to alter and vary the schedules annexed to this act, and to dispense with any of the returns hereby made necessary, or any of the forms of returns prescribed by this act; and that every such regulation shall be published in the London Gazette, and thereupon shall be of the like force as if the same were contained in this act: Provided always, that nothing herein contained shall be construed to permit the said committee to make any such regulations which shall not apply alike to all such companies as may be registered under the authority of this act, so far as the same may be applicable to them.

Regulations to apply to all companies.

Inspection of returns at registry office.

XVIII. And be it enacted, That every person shall be at liberty to inspect the returns, deeds, registers, and indexes which shall be made to or kept by the said registrar of joint-stock companies; and that there shall be paid for such inspection such fees as may be appointed by the commissioners of her Majesty's Treasury in that behalf, not exceeding one shilling for each such inspection; and that any person shall be at liberty to require a copy or extract of any such return or deed, to be certified by the said registrar; and there shall be paid for such certified copy or extract such fee as the commissioners of her Majesty's Treasury may appoint in that behalf, not exceeding sixpence for each folio of such copy or extract; and that in all courts of law and equity, and elsewhere, every such copy or extract so certified shall be received in evidence, without proof of the signature thereto, or of the seal of office affixed thereto.

Certified copies or extracts.

Legal effect thereof.

Office for registration:

Appointment of registrar, &c. of joint-stock companies.

XIX. And be it enacted, That it shall be lawful for the committee of Privy Council for trade, and they are hereby empowered to appoint a person to be and to be called the registrar of joint-stock companies, and, if the said committee see fit, an assistant registrar, clerks, and

complete registration of the company, as the case may require, and also of the changes in the names of all shareholders of such company whose names shall have been changed by marriage or otherwise since the last preceding half-yearly return, or since the complete registration of the company, as the case may require:

And if within any such period any such return be not made, then, on conviction thereof, every director of such company shall be liable to pay a sum not exceeding twenty pounds. Penalty.

XII. And be it enacted, That if at any time any party to a transfer of a share request in writing the directors of any such company to make a return thereof, then forthwith on such request, the directors shall make the same accordingly; and that on proof of such transfer and such request to the satisfaction of the registrar of joint-stock companies it shall be lawful for any such party to make a return of such transfer, which shall be received, marked, and registered, and with the same effect, as hereby provided in the case of returns made by such companies. Returns made by request.

XIII. And be it enacted, That until the return of the transfer or other fact or event whereby a person becomes the holder of any shares, be made, pursuant to the provisions hereinbefore contained, it shall not be lawful for such company, its directors or officers, if such fact or event be known to them respectively, to pay to any such person any part of the profits of the concern, nor for any such person to sue for or recover any part of the profits arising in respect of such share, or in anywise to act as a shareholder; and that, until the return of the transfer of any share shall have been made pursuant to the provisions hereinbefore contained, the person whose share shall have been thereby transferred shall, so far as respects his liability to the debts and engagements of the company, and also as respects the reimbursement of any loss, damages, costs, and charges he may incur thereby, be deemed to continue a shareholder of such company. Restriction of rights of shareholders by non-registration of shares transferred. Continuance of liability of shareholder transferred.

XIV. And be it enacted, That annually in the month of January in every year every company completely registered under this act, except companies which shall have been incorporated by act of Parliament after complete registration (*u*), shall make to the said registry office a return of the name and business of the company; and that on the receipt of such return the registrar of joint-stock companies shall give a certificate thereof; and that if within the further period of one month such return be not made, then, on conviction thereof, such company shall be liable to pay a sum not exceeding twenty pounds: provided always, that it shall be lawful for the Lords of the said committee, on the application of any company, to appoint any other period of the year for the making of such annual return as aforesaid. Periodical registration of companies. Penalty.

XV. And be it enacted, That when the particulars and documents severally by this act required to be returned to the said registry office shall have been so returned, it shall be the duty of the said registrar of joint-stock companies, and he is hereby required, to cause to be written on every such document and return of particulars brought to him for registration the day of the receipt thereof, and to cause to be marked on every such return or document, in writing or otherwise, a number denoting the order in which the same was received, and also, Returns generally. Evidence of registration.

(*u*) See note to sect. 11, ante, p. 44.

APPENDIX.

STATUTES.

Certificates of registration.

upon demand, to cause an acknowledgment of t
turn or document to be given to the person by
be so brought; and that if such returns or docu
to the provisions of this act, or of any regulation
it shall be the duty of the registrar, and he is h
with to register the same, and, on demand, to g
a certificate of provisional or complete registra
require, signed by him, and sealed with the seal
certificate must set forth whether the company

Effect of certificate as evidence.

provisionally or completely; and that, in the a
the contrary, any such certificate, or a copy of an
said, shall be received in evidence, without pr
thereto, or of the seal of office affixed thereto.

Authentication of returns.

XVI. And be it enacted, That until the com
tained its certificate of complete registration,
company, or their solicitor as aforesaid, shall
made every return by this act required to be
company shall have obtained a certificate of com
directors of the company shall make or cause to
return; and one or more of such promoters, or t
directors, as the case may be, shall sign such ret
return which shall be made after complete regis
ny shall be sealed with the seal of the company.

Regulations as to returns.

XVII. And be it enacted, That if the commit
for trade shall deem it expedient, then it shall h
committee and they are hereby authorized from
regulations respecting the form of any such retu
rected to be made, and the manner and time of
those purposes to alter and vary the schedules an
to dispense with any of the returns hereby mad
the forms of returns prescribed by this act; an
gulation shall be published in the London Ga
shall be of the like force as if the same were e

Regulations to apply to all companies.

Provided always, that nothing herein contained
permit the said committee to make any such re
not apply alike to all such companies as may be
authority of this act, so far as the same may be

Inspection of returns at registry office.

XVIII. And be it enacted, That every perso
to inspect the returns, deeds, registers, and in
made to or kept by the said registrar of joint-s
that there shall be paid for such inspection such
pointed by the commissioners of her Majesty's
half, not exceeding one shilling for each such

Certified copies or extracts.

any person shall be at liberty to require a copy o
return or deed, to be certified by the said regist
be paid for such certified copy or extract such
sioners of her Majesty's Treasury may appoint
exceeding sixpence for each folio of such copy o

Legal effect thereof.

in all courts of law and equity, and elsewhere,
extract so certified shall be received in evidence
the signature thereto, or of the seal of office affixe

Office for registration:

Appointment of registrar, &c. of joint-stock companies.

XIX. And be it enacted, That it shall be lawful
of Privy Council for trade, and they are hereby emp
a person to be and to be called the registrar of join
and, if the said committee see fit, an assistant regi

other necessary officers and servants; and that every such registrar and assistant registrar, clerks, and officers shall be entitled to hold their offices during the pleasure only of the said committee; and that from time to time it shall be lawful for the commissioners of her Majesty's Treasury and they are hereby authorized to fix the salary or remuneration of such registrar, assistant registrars, clerks, officers, and servants; and that, subject to the provisions of this act, it shall be lawful for the said committee of Privy Council for trade, and they are hereby authorized to make rules for regulating the execution of the office of the said registrar; and that such registrar shall have a seal of office to be by him used in the authentication of all matters relating to his said office in respect of which such authentication is by this act required; and that such assistant registrar shall, in the absence of the registrar, be competent to do all things which the registrar is authorized, or empowered, directed, or required to do, as fully and effectually, to all intents and purposes, as the registrar himself may do; and all provisions in this act relating to the signature and seal of office of the said registrar shall apply to the said assistant registrar: Provided always, that the registrar shall not be absent from the duties of his office, except on account of ill health or other urgent cause, without express leave in writing of the said committee of Privy Council for trade for that purpose previously obtained.

Assistant registrar.

Leave of absence.

XX. And be it enacted, That from the hour of ten of the clock in the morning until five of the clock in the afternoon, and at such other times as the said committee of Privy Council for trade shall appoint, such registrar, or in the unavoidable, or, as aforesaid, permitted absence of the registrar, then such assistant registrar, shall give his attendance at the said office every day throughout the year, except Sundays, Good Friday, Christmas Day, and any other general holiday or fast day appointed by her Majesty in council.

Registrar's office attendance.

XXI. And be it enacted, That every company shall pay the following fees; (that is to say),

Fees of registration.

For a certificate of provisional registration the sum of five pounds:

For a certificate of complete registration the sum of five pounds; and one shilling additional in respect of every thousand pounds value of capital, as declared on the formation of the company in the deed of settlement, or by any other special authority:

For an annual certificate the sum of one pound:

And also such other fees as shall be appointed to be paid in respect of any other services to be performed by the said registrar; and that from time to time it shall be lawful for the commissioners of her Majesty's Treasury, and they are hereby authorized, in addition to the fees hereinbefore required to be paid in respect of such certificates, to fix such other fees to be paid for the services to be performed by the registrar of joint stock companies as they shall deem requisite to defray both the expenses of the said office, and the salaries or other remuneration of the said registrar and of any other persons employed under him, with the sanction of the said commissioners of her Majesty's Treasury, in the execution of this act; and that the balance, if any, shall be carried to the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and be paid accordingly into the receipt of her Majesty's Exchequer at Westminster; and that it shall be lawful for the said commissioners of her Majesty's Treasury to regulate the manner in which such fees are to be received,

Commissioners of Treasury may fix other fees.

Balance to go to Consolidated Fund.

Regulation of fees.

APPENDIX.

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upon demand, to cause an acknowledgment of the receipt of such return or document to be given to the person by whom the same shall be so brought; and that if such returns or documents be conformable to the provisions of this act, or of any regulations in that behalf, then it shall be the duty of the registrar, and he is hereby required forthwith to register the same, and, on demand, to grant to such company a certificate of provisional or complete registration, as the case may require, signed by him, and sealed with the seal of his office; which certificate must set forth whether the company has been constituted provisionally or completely; and that, in the absence of evidence to the contrary, any such certificate, or a copy of any such return as aforesaid, shall be received in evidence, without proof of the signature thereto, or of the seal of office affixed thereto.

Certificates of registration.

Effect of certificate as evidence.

Authentication of returns.

XVI. And be it enacted, That until the company shall have obtained its certificate of complete registration, the promoters of the company, or their solicitor as aforesaid, shall make or cause to be made every return by this act required to be made; and after such company shall have obtained a certificate of complete registration the directors of the company shall make or cause to be made every such return; and one or more of such promoters, or their solicitor, or such directors, as the case may be, shall sign such return; and every such return which shall be made after complete registration of the company shall be sealed with the seal of the company.

Regulations as to returns.

XVII. And be it enacted, That if the committee of Privy Council for trade shall deem it expedient, then it shall be lawful for the said committee and they are hereby authorized from time to time to make regulations respecting the form of any such returns as are hereby directed to be made, and the manner and time of making them, and for those purposes to alter and vary the schedules annexed to this act, and to dispense with any of the returns hereby made necessary, or any of the forms of returns prescribed by this act; and that every such regulation shall be published in the London Gazette, and thereupon shall be of the like force as if the same were contained in this act: Provided always, that nothing herein contained shall be construed to permit the said committee to make any such regulations which shall not apply alike to all such companies as may be registered under the authority of this act, so far as the same may be applicable to them.

Regulations to apply to all companies.

Inspection of returns at registry office.

XVIII. And be it enacted, That every person shall be at liberty to inspect the returns, deeds, registers, and indexes which shall be made to or kept by the said registrar of joint-stock companies; and that there shall be paid for such inspection such fees as may be appointed by the commissioners of her Majesty's Treasury in that behalf, not exceeding one shilling for each such inspection; and that any person shall be at liberty to require a copy or extract of any such return or deed, to be certified by the said registrar; and there shall be paid for such certified copy or extract such fee as the commissioners of her Majesty's Treasury may appoint in that behalf, not exceeding sixpence for each folio of such copy or extract; and that in all courts of law and equity, and elsewhere, every such copy or extract so certified shall be received in evidence, without proof of the signature thereto, or of the seal of office affixed thereto.

Certified copies or extracts.

Legal effect thereof.

Office for registration:

Appointment of registrar, &c. of joint-stock companies.

XIX. And be it enacted, That it shall be lawful for the committee of Privy Council for trade, and they are hereby empowered to appoint a person to be and to be called the registrar of joint-stock companies, and, if the said committee see fit, an assistant registrar, clerks, and

the case of companies for executing such works as aforesaid, contracts for services in making surveys and performing all other acts necessary for obtaining an act of incorporation or other act for enabling the company to execute such works.

Proceedings of companies before registration, and while a company is not deemed to be provisionally registered.

XXIV. And be it enacted, That if before a certificate of provisional registration shall be obtained the promoters or any of them, or any person employed by or under them, take any monies in consideration of the allotment either of shares or of any interest in the concern, or by way of deposit for shares to be granted or allotted; or issue, in the name or on behalf of the company (*z*), any note or scrip, or letter of allotment, or other instrument or writing to denote a right or claim, or preference or promise, absolute or conditional, to any shares; or advertise the existence or proposed formation of the company; or make any contract whatsoever for or in the name or on behalf of such intended company; then every such person shall be liable to forfeit for every such offence a sum not exceeding twenty-five pounds; and that it shall be lawful for any person to sue for and recover the same by action of debt.

Sec. penalty against persons offending.

On complete registration: Powers and privileges obtained thereby. Incorporation.

XXV. And be it enacted, That on the complete registration of any company being certified by the registrar of joint-stock companies, such company and the then shareholders therein, and all the succeeding shareholders, whilst shareholders, shall be and are hereby incorporated (*a*) as from the date of such certificate by the name of the company as set forth in the deed of settlement, and for the purpose of carrying on the trade or business for which the company was formed, but only according to the provisions of this act, and of such deed as aforesaid, and for the purpose of suing and being sued, and of taking and enjoying the property and effects of the said company; and thereupon any covenants or engagements entered into by any of the shareholders or other persons with any trustee on the behalf of the company, at any time before the complete registration thereof, may be proceeded on by the said company and enforced in all respects as if they had been made or entered into with the said company after the incorporation thereof; and such company shall continue so incorporated until it shall be dissolved, and all its affairs wound up; but so as not in anywise to restrict the liability of any of the shareholders of the company, under any judgment, decree, or order for the payment of money which shall be obtained against such company, or any of the members thereof, in any action or suit prosecuted by or against such company in any court of law or equity; but every such shareholder shall, in respect of such monies, subject as after mentioned, be and continue liable as he would have been if the said company had not been incorporated; and thereupon it shall be lawful for the said company, and they are hereby empowered, as follows; that is to say,

Without restriction of liability.

Company empowered to act.

1. To use the registered name of the company, adding thereto "registered;" and also,
2. To have a common seal (with power to break, alter, and change the same from time to time), but on which must be inscribed the name of the company; and also,
3. To sue and be sued by their registered name in respect of any

(*z*) This section applies to all railway companies. See note to sect. 2, ante, p. 38.

(*a*) See, as to the construction of this section, ante, p. 14, of the text.

and in which they are to be kept, and in which they are to be accounted for: Provided always, that if within two years after a company shall have obtained a certificate of complete registration, such company shall obtain an act for the incorporation thereof, then three-fourths of the fee paid by or on behalf of such company on such complete registration in respect of the capital of the company, shall be reimbursed and repaid to the said company; and that it shall be lawful for the said commissioners of her Majesty's Treasury, and they are hereby authorized and empowered to repay the same accordingly.

Return of three-fourths of the fee on capital to companies obtaining acts of Parliament.

Repayment by Treasury.

XXII. And be it enacted, That if either the said registrar of joint-stock companies, or any person employed under him, either demand or receive any gratuity or reward in respect of any service performed by him, other than the fees aforesaid, then for every such offence every such registrar or person shall be guilty of a misdemeanour.

Extortion a misdemeanour.

XXIII. And be it enacted, That on the provisional registration of any company being certified by the registrar of joint-stock companies, it shall be lawful for the promoters of any company so registered to act provisionally, but not for any longer period than twelve months from the date of the certificate, unless such certificate shall be renewed, which may be done on application for that purpose; and no such renewed certificate shall be in force for a longer period than twelve months from the date thereof (*x*); and it shall be lawful for the promoters of such company,—

On provisional registration.

Effect of provisional registration.

To assume the name of the intended company, but coupled with the words "registered provisionally;" and also,

To open subscription lists; and also,

To allot shares, and receive deposits by way of earnest thereon, at a rate not exceeding ten shillings for every one hundred pounds on the amount of every share in the capital of the intended company; and also, in the case of companies for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock, which cannot be carried into execution without the authority of Parliament, in addition to and exclusive of such sum of ten shillings per hundred pounds, such further sum per hundred pounds on the amount of every such share as may be required by the standing orders of either house of Parliament to be deposited before the obtaining of an act of Parliament for enabling the company to execute such work (*y*); and also,

To perform such other acts only as are necessary for constituting the company, or for obtaining letters-patent, or a charter, or an act of Parliament.

But not to make calls, nor to purchase, contract for, or hold lands, nor to enter into contracts for any services, or for the execution of any works, or for the supply of any stores, except such services and stores or other things as are necessarily required for the establishing of the company, and except any purchase or other contract to be made conditional on the completion of the company, and to take effect after the certificate of complete registration, act of Parliament, or charter or letters-patent, shall have been obtained, and, except in

(*x*) The construction of this section seems to be, that a certificate of provisional registration cannot be renewed more than once.

(*y*) See the regulations of Parliament on this subject. Lords' standing order, No. 224; Commons' standing order, No. 33.

power to enter into contracts, otherwise than conditionally upon obtaining such act, or to exercise the power to purchase and hold lands as aforesaid, or to exercise the power to receive instalments from shareholders beyond the sum or per-centage necessary to be deposited in compliance with the standing orders of either house of Parliament, or such other sum as may be requisite for obtaining the act of incorporation or other act for granting the authority of Parliament to execute such work, or to exercise the power to borrow money, as aforesaid, or to exercise the power to declare dividends, as aforesaid; and, subject to these last-mentioned exceptions, all the powers by this enactment hereinbefore given to any company completely registered, except the general power to perform all acts necessary for carrying on the business of the company, may be exercised as fully by any such company so completely registered as by any other company so completely registered; provided always, that it shall be lawful for any such company to perform all acts which may be necessary for obtaining an act of incorporation or other act for obtaining the authority of Parliament to execute its works as aforesaid, any thing herein contained to the contrary notwithstanding; and that upon obtaining such act of incorporation or other such act as aforesaid, or at the time of the coming into operation of such act, as shall be thereby appointed, all the powers which any such company shall obtain by virtue of this act, and all the provisions and regulations of this act which shall apply to such company, shall cease and determine, except so far as shall be otherwise provided by such act of incorporation or other such act as aforesaid.

Power to obtain act of Parliament.

Regulation of company under such act.

XXVI. And be it enacted, That no shareholder of any joint-stock company completely registered under this act shall be entitled to receive any dividends or profits, or be entitled to the remedies or powers hereby given to shareholders, until he shall have executed the deed of settlement of the said company, or some deed referring thereto, and also have paid up all instalments or calls due from him, and shall have been registered in the registry office aforesaid; and further, that it shall be lawful for every shareholder who shall have signed such deed, and paid up such instalments or calls, and shall have been registered, and he is hereby entitled,

Shareholders: Restriction of rights prior to execution of deed of settlement.

Rights thereafter.

To be present at all general meetings of the company; and also,

To take part in the discussions thereat; and also,

To vote in the determination of any question thereat, and that either in person or by proxy, unless the deed of settlement shall preclude shareholders from voting by proxy; and also,

To vote in the choice of directors, and of every auditor to be elected by the shareholders:

subject nevertheless to the provisions of this act, and of the deed of settlement of the company or other special authority, so far as such provisions shall either regulate or restrict the exercise of such powers, but not so as to deprive such shareholders thereof; and further, with regard to subscribers and every person entitled or claiming to be entitled to any share in any joint-stock company the formation of which shall be commenced after the first day of November One thousand eight hundred and forty-four, and until such joint-stock company shall have obtained a certificate of complete registration, and until any such subscriber or person shall have been duly registered as a shareholder in the said registry office, it shall not be lawful for such person to dispose, by sale or mortgage, of such share,

Restriction on disposal of shares.

claim by or upon the company upon or by any person, whether a member of the company or not, so long as any such claim may remain unsatisfied; and also,

4. To enter into contracts for the execution of the works, and for the supply of the stores, or for any other necessary purpose of the company; and also,
5. To purchase and hold lands, tenements, and hereditaments in the name of the said company, or of the trustees or trustee thereof, for the purpose of occupying the same as a place or places of business of the said company, and also (but nevertheless with a license, general or special, for that purpose, to be granted by the committee of the Privy Council for trade, first had and obtained) such other lands, tenements, and hereditaments as the nature of the business of the company may require; and also,
6. To issue certificates of shares; and also,
7. To receive instalments from subscribers in respect of the amount of any shares not paid up; and also,
8. To borrow or raise money within the limitations prescribed by any special authority; and also,
9. To declare dividends out of the profits of the concern; and also,
10. To hold general meetings periodically, and extraordinary meetings upon being duly summoned for that purpose; and also,
11. To make from time to time, at some general meeting of shareholders specially summoned for the purpose, bye-laws for the regulation of the shareholders, members, directors, and officers of the company, such bye-laws not being repugnant to or inconsistent with the provisions of this act or of the deed of settlement of the company; and also,
12. To perform all other acts necessary for carrying into effect the purposes of such company, and in all respects as other partnerships are entitled to do:

And the said company are hereby empowered and required,—

13. To appoint from time to time, for the conduct and superintendence of the execution of the affairs of the company, a number of directors, not less than three, for a period not greater than five years, with or without eligibility to be re-elected at the expiration of the term, as may be prescribed by any deed of settlement or bye-law; and also,
14. To appoint and remove one or more auditors, and such other officers as the deed of settlement under which the company shall be constituted may authorize:

subject nevertheless, with respect to all such powers and privileges, to the provisions of this act, and subject also to the provisions of the deed of settlement of the company or any other special authority: provided always, with regard to any company for executing any bridge, road, cut, canal, reservoir, aqueduct, waterwork, navigation, tunnel, archway, railway, pier, port, harbour, ferry, or dock, which cannot be carried into execution without obtaining the authority of Parliament, that on the complete registration of any such company, and before such company shall have obtained its act of incorporation or other act whereby the authority of Parliament shall be granted for executing such work, it shall not be lawful for any such company or the directors or officers thereof to exercise the hereinbefore-mentioned

Restriction of powers of companies for executing Parliamentary works before obtaining an act.

that it shall not be lawful for the directors to purchase any shares of the company, nor to sell any such shares, except shares forfeited on the nonpayment of calls or instalments, nor to lend to any one of their number, or to any officer of the company, any money belonging to the company without the authority and sanction of a general meeting of shareholders duly convened. lending money.

Pecuniary qualification of directors, patrons, &c.

XXVIII. And be it enacted, That henceforth, notwithstanding anything to the contrary in any deed of settlement or other instrument by which a joint-stock company shall be constituted or regulated, it shall not be lawful to appoint any person to be or to act as a director, whether honorary or otherwise, or to hold the office of patron or president, or any other office of the like description, nor shall it be lawful for any person to act in any such capacity unless at the time of such his appointment or of such his acting he hold in his own right at least one share in the capital of such company; and that if, without having such share, any person be or become or act as director, patron, or president of such company, or in any office of such or the like nature, then he shall forfeit for every such offence a sum not exceeding twenty pounds; and that if any person be announced or held out by or on behalf of the company as a director, patron, or president, or as holding any office of such or the like description, without having so consented or acted, then each director of such company knowingly concurring in such representation shall forfeit a sum not exceeding twenty pounds.

Disqualification of directors.

XXIX. And be it enacted, That if any director of a joint-stock company registered under this act (*d*) be either directly or indirectly concerned or interested in any contract proposed to be made by or on behalf of the company, whether for land, materials, work to be done, or for any purpose whatsoever, during the time he shall be a director, he shall, on the subject of any such contract in which he may be so concerned or interested, be precluded from voting or otherwise acting as a director; and that if any contract or dealing (except a policy of assurance, grant of annuity, or contract for the purchase of an article or of service, which is respectively the subject of the proper business of the company, such contract being made upon the same or the like terms as any like contract with other customers or purchasers), shall be entered into, in which any director shall be interested, then the terms of such contract or dealing shall be submitted to the next general or special meeting of the shareholders to be summoned for that purpose; and that no such contract shall have force until approved and confirmed by the majority of votes of the shareholders present at such meeting; and that if at any time any director cease to be a holder of the prescribed number of shares in the company, or shall become a bankrupt or insolvent, or shall have suspended payment, or compromised with his creditors, or be declared a lunatic, then it shall be unlawful for any such director to continue as a director, or to act as such, and the office of such director shall be and is hereby declared to be vacant.

As to contracts.

Approval of general meeting of shareholders.

As to shares, &c.

Validity of acts of directors.

XXX. And be it enacted, That notwithstanding it may be afterwards discovered that there was some defect or error in the appointment of any person acting, or who may have acted, as a director of a joint-stock company registered under this act (*e*), or that such person was disqualified, yet all acts done by him as such director before

(*d*) See note to sect. 27, ante. (*e*) See note to sect. 27, ante.

APPENDIX. — STATUTES.

the discovery of such defect or error, either solely or with other directors, shall be as binding on him, and on the company, and the directors and officers thereof, as if such person had been duly appointed or qualified, and, if such acts were done bonâ fide, shall be as binding on all persons whomsoever as if such person had been duly appointed or qualified.

Acts of fraud or wilful omission by directors or officers a misdemeanour.

XXXI. And be it enacted, That if any such director or other officer of any joint-stock company registered under this act wrongfully do or omit any act, with intent to defraud the company or any shareholder therein, or falsify or fraudulently mutilate or fraudulently make an erasure in the books of account or books of register, or any document belonging to the company, then such director or officer shall be deemed to be guilty of a misdemeanour.

Authentication and legal effect of books of record.

XXXII. And be it enacted, That if the entry of the proceedings of any meeting of the shareholders or of the directors of any joint-stock company registered under this act (*f*) purport to be signed by the chairman duly presiding at such meeting, and sealed with the seal of the company, then it shall be the duty of all courts of justice, justices, and others, and they are hereby required, to receive the book in which such entry shall be made as primâ facie evidence, not only of the proceedings of the meeting of which entry shall be so made, but of such meetings having been duly convened, and of the persons making or entering such orders or proceedings being shareholders or directors, and of the signature of the chairman.

Inspection of books of registry.

XXXIII. And be it enacted, That the books of any such company wherein the proceedings of the company are recorded shall be kept at the principal or only place of business of the company, and at all reasonable times such books shall be open to the inspection of any shareholder of the company; subject nevertheless to the provisions of the deed of settlement or of any bye-law.

Account books.

XXXIV. And be it enacted, That the directors shall cause the accounts of such company to be duly entered in books to be provided for the purpose.

Balancing of books.

XXXV. And be it enacted, That fourteen days at the least before the period at which the accounts are required to be delivered to the auditors as hereinafter provided, the directors of such company shall cause the books of the company to be balanced, and a full and fair balance sheet to be made up; and that previously to such balance sheet being delivered to the auditors as hereinafter provided, the directors, or any three of their number, shall examine such balance sheet, and sign it as so examined; and that when the balance sheet shall have been so examined, the chairman of the directors shall sign such balance sheet, and that thereupon the directors shall cause the same to be recorded in the books of the company.

Examination of balance sheet.

Production of the balance sheet.

XXXVI. And be it enacted, That at each ordinary meeting of the shareholders the directors shall produce such balance sheet to the shareholders assembled thereat.

Inspection of accounts by shareholders.

XXXVII. And be it enacted, That during the space of fourteen days previously to such ordinary meeting, and also during one month thereafter, every shareholder of the company may, subject to the provisions of the deed of settlement, or of any bye-law, inspect the books of account and the balance sheet of the company, and take copies thereof and extracts therefrom; and that if at any other time

Occasional inspection.

(*f*) See as to this and the five following sections, note to sect. 27, ante.

three directors authorise in writing any shareholder to make such inspection, then at such other time the shareholder so authorised may make such inspection.

Auditors: Appointment of auditors by company.

XXXVIII. And be it enacted, That every joint-stock company completely registered under this act (*g*) shall annually at a general meeting appoint one or more auditors of the accounts of the company (one of whom at least shall be appointed by the shareholders present at the meeting in person or by proxy), and shall return the names of such auditors to the registrar of joint-stock companies; and that if an auditor be not appointed on behalf of the shareholders, or if he shall die, or become incapable of acting, or shall decline to act at the prescribed period, or if such return be not made, then on the application of any shareholder of the company it shall be the duty of the committee of Privy Council for trade and they are hereby authorized to appoint an auditor on behalf of the shareholders; and that such auditor shall continue to act till the next general meeting; and the due appointment of such auditor shall be returned to the registrar of joint-stock companies, and that thereupon it shall be his duty to register the same; and that it shall be lawful for the Commissioners of the Treasury and they are hereby empowered to appoint that the company shall pay to such auditor such salary or remuneration as to the said commissioners shall appear suitable, having regard to the duties of his office, and that thereupon such auditor shall be entitled to recover such salary from the company, as and when it shall become due, according to the terms of the appointment thereof.

By Board of Trade.

Salary of such auditor.

Delivery of accounts to auditors.

XXXIX. And be it enacted, That twenty-eight days at least before the ensuing ordinary meeting at which such balance sheet is required to be produced to the shareholders, the directors shall deliver to the auditors the half-yearly or other periodical accounts and the balance sheet required to be presented to the shareholders; and that the auditors shall receive from the directors such accounts and balance sheet, and examine the same.

Auditors to receive and examine accounts.

Powers of auditors.

XL. And be it enacted, That throughout the year and at all reasonable times of the day it shall be lawful for the auditors and they are hereby authorized, to inspect the books of account and books of registry of such company; and that the auditors may demand and have the assistance of such officers and servants of the company and such documents as they shall require for the full performance of their duty in auditing the accounts.

Assistance to auditors.

Report by auditors.

XLI. And be it enacted, That within fourteen days after the receipt of such balance sheet and accounts the auditors shall either confirm such accounts, and report generally thereon, or shall, if they do not see proper to confirm such accounts, report specially thereon, and deliver such accounts and balance sheet to the directors of the company.

Publication of reports.

XLII. And be it enacted, That ten days before the ordinary meeting of such company the directors shall, subject to the provisions of any deed of settlement or bye-law in that behalf, send or cause to be sent a printed copy of the balance sheet and auditors' report to every

(*g*) Sect. 25 seems to require a railway company, after complete registration, and before it obtains an act of incorporation, to appoint auditors. See p. 14 in the text. The note to sect. 27, ante, p. 52, is applicable to the above and five following sections.

the discovery of such defect or error, either solely or with other directors, shall be as binding on him, and on the company, and the directors and officers thereof, as if such person had been duly appointed or qualified, and, if such acts were done bonâ fide, shall be as binding on all persons whomsoever as if such person had been duly appointed or qualified.

Acts of fraud or wilful omission by directors or officers a misdemeanour.

XXXI. And be it enacted, That if any such director or other officer of any joint-stock company registered under this act wrongfully do or omit any act, with intent to defraud the company or any shareholder therein, or falsify or fraudulently mutilate or fraudulently make an erasure in the books of account or books of register, or any document belonging to the company, then such director or officer shall be deemed to be guilty of a misdemeanour.

Authentication and legal effect of books of record.

XXXII. And be it enacted, That if the entry of the proceedings of any meeting of the shareholders or of the directors of any joint-stock company registered under this act (*f*) purport to be signed by the chairman duly presiding at such meeting, and sealed with the seal of the company, then it shall be the duty of all courts of justice, justices, and others, and they are hereby required, to receive the book in which such entry shall be made as primâ facie evidence, not only of the proceedings of the meeting of which entry shall be so made, but of such meetings having been duly convened, and of the persons making or entering such orders or proceedings being shareholders or directors, and of the signature of the chairman.

Inspection of books of registry.

XXXIII. And be it enacted, That the books of any such company wherein the proceedings of the company are recorded shall be kept at the principal or only place of business of the company, and at all reasonable times such books shall be open to the inspection of any shareholder of the company; subject nevertheless to the provisions of the deed of settlement or of any bye-law.

Account books.

XXXIV. And be it enacted, That the directors shall cause the accounts of such company to be duly entered in books to be provided for the purpose.

Balancing of books.

XXXV. And be it enacted, That fourteen days at the least before the period at which the accounts are required to be delivered to the auditors as hereinafter provided, the directors of such company shall cause the books of the company to be balanced, and a full and fair balance sheet to be made up; and that previously to such balance sheet being delivered to the auditors as hereinafter provided, the directors, or any three of their number, shall examine such balance sheet, and sign it as so examined; and that when the balance sheet shall have been so examined, the chairman of the directors shall sign such balance sheet, and that thereupon the directors shall cause the same to be recorded in the books of the company.

Examination of balance sheet.

Production of the balance sheet.

XXXVI. And be it enacted, That at each ordinary meeting of the shareholders the directors shall produce such balance sheet to the shareholders assembled thereat.

Inspection of accounts by shareholders.

XXXVII. And be it enacted, That during the space of fourteen days previously to such ordinary meeting, and also during one month thereafter, every shareholder of the company may, subject to the provisions of the deed of settlement, or of any bye-law, inspect the books of account and the balance sheet of the company, and take copies thereof and extracts therefrom; and that if at any other time

Occasional inspection.

(*f*) See as to this and the five following sections, note to sect. 27, ante.

to be made or accepted by them on behalf of such company; and that every such bill of exchange and promissory note so made or accepted as aforesaid shall be countersigned by the secretary or other appointed officer of the company in whose behalf the same is expressed to be made or accepted; and that every bill of exchange so made as aforesaid, or received by or on behalf of the company, may be indorsed in the name of the company by any officer authorised by deed of settlement or bye-law in that behalf; and that every such bill of exchange or promissory note so made, accepted, or indorsed as aforesaid shall, immediately after the making, accepting, or indorsing of the same, be reported to the proper officer of the company on whose behalf the same shall have been made, accepted, or indorsed, and such last-mentioned officer shall enter the same in proper books to be kept for that purpose; and that if any such bill of exchange or promissory note be not so reported and entered, then the officer by whose default such bill or note shall not be so reported or entered shall be liable to repay to the company the amount which the company shall pay or be liable to pay in respect of such bill or note: provided always, that nothing herein contained shall be deemed to make any such secretary or officer personally liable upon any such bill of exchange or promissory note, nor be deemed to make any such directors personally liable thereon, except as shareholders of the company; and that every such company on whose behalf or account any bill of exchange or promissory note shall be made, accepted, or indorsed, in manner and form aforesaid, shall and may sue and be sued thereon, as fully and effectually, and in the same manner, as in the case of any contract made and entered into under their common seal.

Countersign of secretary.

Indorsation.

Report and entry thereof.

Liability.

Directors and officers not personally liable.

Liability of company and members.

XLVI. And be it enacted, That all deeds and instruments bearing the seal of the company shall be signed by two at the least of the directors of the company.

Deeds, &c. to be signed by two directors.

XLVII. And be it enacted, That all bye-laws made by any joint-stock company completely registered under this act, in pursuance of the power hereinbefore given (*i*), must be reduced into writing, and must have affixed thereto the common seal of the company; and that such bye-laws must be registered at the office for registering joint-stock companies, and until they be so registered they shall not be of any force; and that such bye-laws must be printed and circulated for the use of the shareholders, and a copy thereof must be given to every officer of the company, and to every shareholder who shall require the same.

Bye-laws: Form of bye-laws.

Registration and publication thereof.

XLVIII. And be it enacted, That in all actions, suits, and other legal proceedings for the enforcement of such bye-laws, or other penalties for the breach thereof, the production of a written or printed copy of the bye-laws of the company, having the seal of office of the registrar of joint-stock companies affixed thereto, shall be sufficient evidence of such bye-laws.

Bye-laws to be evidence.

XLIX. And be it enacted, That it shall be the duty of the directors of every joint-stock company registered under this act (*i*) to keep or cause to be kept a book, to be called the "register of shareholders," and from time to time in such book to enter the following particulars; that is to say,

Capital: Register of shareholders.

The names and addresses of all persons or corporations being shareholders of the company; and also,

(*i*) See note to sect. 27, ante, p. 52.

The number of shares to which such shareholders shall be respectively entitled, distinguishing each share by its number; and also,

The amount of the instalments paid on such shares.

Inspection of register of shareholders.

L. And be it enacted, That it shall be lawful for every shareholder, or if such shareholder be a corporation then the clerk or principal officer of such corporation, at all convenient times to search the register of shareholders gratis, and to require a copy thereof or of any part thereof; and that the company may demand a sum not exceeding sixpence for every one hundred words so required to be copied.

Requisites of certificates of shares.

LI. And be it enacted, That, on demand of the holder of any share in any joint-stock company completely registered under this act (*k*), the company shall cause a certificate of the proprietorship of such share to be delivered to such shareholder, specifying the share in the undertaking to which such shareholder is entitled, and the amount paid up in respect of such share at the date of such certificate, and shall have the common seal of the company affixed thereto; and for such certificate the company may demand any sum not exceeding one shilling; and that such certificate must be according to the form in the schedule (I.) to this act annexed, or to the like effect.

Fee for certificate.

Form of certificate.

Legal effect of certificate as evidence.

LII. And be it enacted, That it shall be the duty of all courts of justice, judges, justices, and others to admit such certificate as primâ facie evidence of the title of the shareholder to the share therein specified; nevertheless the want of such certificate shall not prevent the holder of any share from disposing thereof.

Renewal of certificate.

LIII. And be it enacted, That if any such certificate be worn out or damaged, then, upon such certificate being produced at some meeting of the directors, it shall be lawful for them to order such certificate to be cancelled; and that thereupon another similar certificate shall, if he require the same, be given to the party in whom the property of such certificate and of the share therein mentioned shall at the time be vested; or if such certificate be lost or destroyed, then, upon proof thereof, a similar certificate shall, if he require the same, be given to the party entitled to the certificate so lost or destroyed; and that in either case it shall be the duty of the secretary and he is hereby required to make a due entry of the substituted certificate in the register of shareholders; and for every such certificate so given or exchanged the company may demand any sum not exceeding the sum of one shilling.

Substituted certificate.

Entry thereof.

Transfer of shares.

LIV. And be it enacted, That, subject to the regulations herein contained, and to be contained in any deed of settlement of any joint-stock company completely registered under this act (*k*), it shall be lawful for every shareholder of such company and he is hereby entitled to sell and transfer his shares therein by deed duly stamped, in which the full amount of the pecuniary consideration for such sale shall be truly expressed, and which instrument of transfer must be according to the form in the schedule (K.) to this act annexed, or to the like effect; and that the directors of the company shall cause a memorial of such instrument of transfer, when produced at the office of the company, to be entered in a book to be called "The Register of Transfers," and the entry thereof to

Deed to be registered.

(*k*) See note to sect. 27, ante, p. 52.

be endorsed on the instrument of transfer; and for every such entry and endorsement the company may demand any sum not exceeding one shilling; and that until such instrument of transfer shall have been so produced at the office of the company the purchaser of the share shall not be entitled to receive any of the profits of the company, or to vote in respect of such share: provided always, that if at the time of such transfer the shareholder shall not have paid the full amount due and payable to the company on every share held by him, then he shall not be entitled to transfer any share, unless there be a provision to the contrary in the deed of settlement.

Endorsement of transfer.

Effect of non-delivery of transfer.

No transfer if shares not paid up.

LV. And be it enacted, That if any shareholder (*l*) fail to pay any instalment of capital due upon or in respect of any share held by him, when the same shall become due, it shall be lawful for any such company and they are hereby authorized to sue such shareholder for the amount in an action of debt in any court having competent jurisdiction in respect of the same; and that in the declaration in any such action it shall be sufficient to state only that at the time of the commencement of the suit the defendant, as the holder of certain shares (stating how many) in a certain company or undertaking, as the case may be, (naming it), was indebted to the company in a certain sum, (stating the amount of the instalments, or so much thereof as is sought to be recovered), for certain instalments of capital then due and payable in respect of the said shares, and that the defendant hath not paid the same; and that if upon the trial of any such action it shall be proved that the defendant was the holder of any share when such instalments, or any of them, in respect of the same, and for which the action is brought, became due, then such company shall recover such instalments, or so much thereof as is due, together with interest for the same at the rate of five pounds per centum per annum, to be computed from the day on which such instalment shall have become due.

Proceedings to recover instalments of capital.

Form of declaration for instalments.

Evidence.

Recovery of instalments and interest.

LVI. And be it enacted, That if any share (*m*) be held jointly by several persons, then any notice required to be given shall be given to such of the said persons whose name shall stand first on the register of shareholders, and notice so given shall be sufficient notice to all the proprietors of such share, and the person so standing first shall be entitled to vote, and to have all the privileges hereby conferred on shareholders.

Notification to joint proprietors.

LVII. And be it enacted, That at every principal place of business of any joint stock company completely registered (*n*) under this act it shall be the duty of the directors and officers of the company and they are hereby respectively required to have written or printed copies of an index or abstract of the deed of settlement,

Deeds of settlement: Publication thereof.

(*l*) A railway company is empowered, after complete registration, and before an act of incorporation is obtained, to receive instalments from shareholders to the amount of the sum required to be deposited by the standing orders in Parliament, and such other sum as may be necessary to obtain an act of incorporation. (See sec. 25, ante). This seems to include a power to make calls for the necessary amount of money to meet the above contingencies; but the proviso in sec. 2, (see ante, p. 38), raises a question whether the above section is applicable to the purpose of enforcing such calls, when made by railway companies.

(*m*) See sect. 49, ante, p. 57.

(*n*) See note to sect. 27, ante, p. 53.

approved by the registrar of joint-stock companies, and a list of the shareholders of the company, and the number of shares held by each, and also a list of the directors and officers thereof, and a copy of the bye laws sealed with the seal of the company, as returned to the said registry office; and that if at any reasonable time any shareholder, or any person authorized in writing by him, apply at any such place of business of the company to inspect the same, then, on demand thereof made during the usual hours of business, it shall be the duty of the directors or officers and they respectively are hereby required to permit such inspection; and that if on such demand any such director or officer to whom such demand is made do not thereupon permit such inspection, then, on conviction thereof, he shall be liable to pay for every such offence a sum not exceeding forty shillings.

Inspection thereof on demand.

Penalty.

Existing companies:

Registration of existing companies.

LVIII. And be it enacted, with regard to all joint stock companies to which this act is hereinbefore made to apply, and which shall exist on the first day of November one thousand eight hundred and forty-four, whether incorporated by act of Parliament or by charter, or privileged by letters patent, or established by virtue of a deed of settlement, or of any other instrument, or by virtue of any authority whatever (*o*), or in any other way whatever, That within three months from the said first day of November the directors, managers, officers, or others having the direction, management, conduct, superintendence, or execution of the affairs of any such company, shall register such company at the office for the registration of joint stock companies, and for that purpose shall make or cause to be made a return of the following particulars, according to the schedule (I.) hereunto annexed; that is to say,

Returns of matters for registration.

1. The name or style of the company; and also,
2. The purpose of the company; and also,
3. The principal or only place for carrying on its business;

and that on such registration every such company shall be entitled to have a certificate of registration, without paying any fee either for such registration or for such certificate, but such certificate shall be for the purpose of shewing that such company had registered, and shall not be considered as a certificate of complete registration, so as to confer on any such company the powers and privileges of this act; and that if within the said period the persons hereby required to register any such company fail so to do, then, on conviction thereof, every such company so failing shall forfeit for every such offence a sum not exceeding fifty pounds.

Certificate of registration gratis.

Penalty.

Privileges of future companies under this act extended to existing companies fully constituted;

LIX. And be it enacted, with regard to such existing companies as aforesaid (except assurance companies), That if any such existing company be so constituted as is by this act required with regard to any future company, or if the deed or deeds of settlement of such existing company contain the particulars by this act required to be contained in some one or other deed of settlement of such future company, and if any other conditions required to be fulfilled by or in respect of any such future company, in order to obtain a certificate of complete registration, be fulfilled in respect of any

(*o*) This clause seems to be applicable to all railway companies existing before the 1st November, 1844, whether incorporated by act of Parliament or not. But see the proviso at the end of sect. 25, ante, p. 51.

such existing company, then such existing company shall be entitled to obtain a certificate of complete registration; but if such existing company be not so constituted, or if such deed of settlement do not contain such particulars, or if such other conditions be not fulfilled, then, on such existing company returning a deed or deeds according to the provisions of this act, and also, in addition to any other matters by this enactment required to be returned by such existing company, such other matters as are by this act required to be returned by any future company in order to obtain or before obtaining a certificate of complete registration as aforesaid, or such modification of the said deeds or returns, or of any of them, as the committee of Privy Council for trade shall direct by any regulation to be made in that behalf, either on the part or in respect of any one company or of any class of companies, and signed by one of the secretaries of the said committee, such existing company shall be entitled to a certificate of complete registration; and on such certificate of complete registration being granted by the registrar of joint-stock companies, it shall be lawful for such existing company, its shareholders, its directors, and its officers, and they are respectively hereby empowered, to have and exercise all such powers and privileges as are by this act conferred upon joint-stock companies to be hereafter formed, subject nevertheless with respect to all such powers and privileges to the provisions of this act, or of any other act to be hereafter passed for regulating the same; and that every such company not incorporated shall be incorporated for the purposes of this act, as from the date of the certificate of complete registration, in such manner as hereinbefore provided with regard to companies to be formed after the first day of November next; and that any directors or other managers of any such company as last aforesaid, with the consent of at least three-fourths in number and value of the shareholders of such company present at a general meeting summoned for that purpose, may at any time or times hereafter make any alterations in the constitution of the said company or otherwise as shall be necessary for enabling such company to come within the provisions of this act, so as the same shall be approved of by the said committee of Privy Council for trade; and the order of such committee, signed as aforesaid, shall be sufficient evidence of such provisions having been complied with, and that any such company has come within the provisions of this act: provided always, with regard to existing companies, that in the event of any such company becoming entitled to a certificate of complete registration as aforesaid it shall not be necessary to pay in respect of such certificate any higher fee than the sum of five pounds, and also the sum of sixpence additional in respect of every thousand pounds value of capital, as declared on the formation of the company in the deed of settlement, or by any other special authority.

Or existing companies fully complying.

Effect of certificate of complete registration.

Incorporation.

Alteration of deeds of settlement in compliance with this act.

Fees for certificates of complete registration for existing companies.

LX. And be it enacted, That so much of the provisions of this act as are applicable to companies formed after the first day of November next shall apply to companies begun or formed since the passing of this act, so far as such provisions shall on or after the said first day of November be applicable to such last-mentioned companies.

Registration of companies begun or formed after the passing of this act.

LXI. Provided always, and be it enacted, That, notwithstanding the incorporation of any existing company in pursuance of this act,

Effect of incorporation of existing companies in re-

approved by the registrar of joint-stock companies, and a list of the shareholders of the company, and the number of shares held by each, and also a list of the directors and officers thereof, and a copy of the bye laws sealed with the seal of the company, as returned to the said registry office; and that if at any reasonable time any shareholder, or any person authorized in writing by him, apply at any such place of business of the company to inspect the same, then, on demand thereof made during the usual hours of business, it shall be the duty of the directors or officers and they respectively are hereby required to permit such inspection; and that if on such demand any such director or officer to whom such demand is made do not thereupon permit such inspection, then, on conviction thereof, he shall be liable to pay for every such offence a sum not exceeding forty shillings.

Inspection thereof on demand.

Penalty.

Existing companies: Registration of existing companies.

LVIII. And be it enacted, with regard to all joint stock companies to which this act is hereinbefore made to apply, and which shall exist on the first day of November one thousand eight hundred and forty-four, whether incorporated by act of Parliament or by charter, or privileged by letters patent, or established by virtue of a deed of settlement, or of any other instrument, or by virtue of any authority whatever (*o*), or in any other way whatever, That within three months from the said first day of November the directors, managers, officers, or others having the direction, management, conduct, superintendence, or execution of the affairs of any such company, shall register such company at the office for the registration of joint stock companies, and for that purpose shall make or cause to be made a return of the following particulars, according to the schedule (I.) hereunto annexed; that is to say,

Returns of matters for registration.

1. The name or style of the company; and also,
2. The purpose of the company; and also,
3. The principal or only place for carrying on its business;

and that on such registration every such company shall be entitled to have a certificate of registration, without paying any fee either for such registration or for such certificate, but such certificate shall be for the purpose of shewing that such company had registered, and shall not be considered as a certificate of complete registration, so as to confer on any such company the powers and privileges of this act; and that if within the said period the persons hereby required to register any such company fail so to do, then, on conviction thereof, every such company so failing shall forfeit for every such offence a sum not exceeding fifty pounds.

Certificate of registration gratis.

Penalty.

Privileges of future companies under this act extended to existing companies fully constituted;

LIX. And be it enacted, with regard to such existing companies as aforesaid (except assurance companies), That if any such existing company be so constituted as is by this act required with regard to any future company, or if the deed or deeds of settlement of such existing company contain the particulars by this act required to be contained in some one or other deed of settlement of such future company, and if any other conditions required to be fulfilled by or in respect of any such future company, in order to obtain a certificate of complete registration, be fulfilled in respect of any

(*o*) This clause seems to be applicable to all railway companies existing before the 1st November, 1844, whether incorporated by act of Parliament or not. But see the proviso at the end of sect. 25, ante, p. 51.

such existing company, then such existing company shall be entitled to obtain a certificate of complete registration; but if such existing company be not so constituted, or if such deed of settlement do not contain such particulars, or if such other conditions be not fulfilled, then, on such existing company returning a deed or deeds according to the provisions of this act, and also, in addition to any other matters by this enactment required to be returned by such existing company, such other matters as are by this act required to be returned by any future company in order to obtain or before obtaining a certificate of complete registration as aforesaid, or such modification of the said deeds or returns, or of any of them, as the committee of Privy Council for trade shall direct by any regulation to be made in that behalf, either on the part or in respect of any one company or of any class of companies, and signed by one of the secretaries of the said committee, such existing company shall be entitled to a certificate of complete registration; and on such certificate of complete registration being granted by the registrar of joint-stock companies, it shall be lawful for such existing company, its shareholders, its directors, and its officers, and they are respectively thereby empowered, to have and exercise all such powers and privileges as are by this act conferred upon joint-stock companies to be hereafter formed, subject nevertheless with respect to all such powers and privileges to the provisions of this act, or of any other act to be hereafter passed for regulating the same; and that every such company not incorporated shall be incorporated for the purposes of this act, as from the date of the certificate of complete registration, in such manner as hereinbefore provided with regard to companies to be formed after the first day of November next; and that any directors or other managers of any such company as last aforesaid, with the consent of at least three-fourths in number and value of the shareholders of such company present at a general meeting summoned for that purpose, may at any time or times hereafter make any alterations in the constitution of the said company or otherwise as shall be necessary for enabling such company to come within the provisions of this act, so as the same shall be approved of by the said committee of Privy Council for trade; and the order of such committee, signed as aforesaid, shall be sufficient evidence of such provisions having been complied with, and that any such company has come within the provisions of this act: provided always, with regard to existing companies, that in the event of any such company becoming entitled to a certificate of complete registration as aforesaid it shall not be necessary to pay in respect of such certificate any higher fee than the sum of five pounds, and also the sum of sixpence additional in respect of every thousand pounds value of capital, as declared on the formation of the company in the deed of settlement, or by any other special authority.

Or existing companies fully complying.

Effect of certificate of complete registration.

Incorporation.

Alteration of deeds of settlement in compliance with this act.

Fees for certificates of complete registration for existing companies.

LX. And be it enacted, That so much of the provisions of this act as are applicable to companies formed after the first day of November next shall apply to companies begun or formed since the passing of this act, so far as such provisions shall on or after the said first day of November be applicable to such last-mentioned companies.

Registration of companies begun or formed after the passing of this act.

LXI. Provided always, and be it enacted, That, notwithstanding the incorporation of any existing company in pursuance of this act,

Effect of incorporation of existing companies in re-

spect of their obligations,

every such company, and the members and officers of every such company, shall be liable to be sued in respect of any valid obligation incurred before such incorporation, in the same manner and with the same legal consequences as if such company had not been incorporated.

Modification of conditions and regulations as to companies.

LXII. And be it enacted, That if at any time during the period of five years from the said first day of November a memorial be presented to the committee of Privy Council for trade, by or on the part of any company, whether now existing or hereafter formed, except assurance companies, making application that any of the conditions and regulations prescribed by this act be dispensed with or modified, and setting forth the special grounds of such application, and if such application be registered at the office of the registrar of joint-stock companies, and if, before such application be granted, the same be three times advertised, at intervals not less than one week, in the London Gazette, then from time to time during the said period of five years and six months after the expiration thereof, it shall be lawful for the said committee and they are hereby empowered, both as regards companies formed before this act shall come into operation and afterwards, either to dispense with or modify such of the conditions by this act required to be fulfilled by any future company for the purpose of obtaining a certificate of complete registration, and such of the regulations by this act made for the government or management of such companies, as to the said committee shall seem fit for facilitating the application of this act to the constitution and arrangements of any such company, but so that nevertheless the order or instrument by which such dispensation or such modification shall be made in writing, and be registered at the office for registering joint-stock companies; and this act shall be construed as if such modifications or alterations were herein contained (*p*); and further, that annually it shall be the duty of the said committee to cause to be laid before both houses of Parliament a return of all such applications for such dispensation or modification, and of the orders made on such applications.

Board of Trade to receive and decide applications.

Return to Parliament by Board of Trade.

Act not to extend to certain partnerships for working mines, &c.;

LXIII. Provided always, and be it enacted, That nothing in this act contained shall extend or be construed to extend to any partnership formed for the working of mines, minerals, and quarries, of what nature soever, on the principle commonly called the cost-book principle.

nor to Irish anonymous partnerships.

LXIV. Provided always, and be it enacted, That nothing in this act contained shall extend or be construed to extend to partnerships in Ireland commonly called "anonymous partnerships," formed under and by virtue of an act passed in the Parliament of Ireland in the twenty-first and twenty-second years of the reign of his late

(*p*) This section, which appears to be applicable to future railway companies seeking acts of incorporation, confers upon the Board of Trade an authority equal to that exercised by the three estates of the realm, in all matters within the jurisdiction which is thus conferred upon them. But this jurisdiction is confined to a power to *dispense with* or *modify* certain conditions and regulations contained in this act; and this would not authorize the Board of Trade to make additions to such conditions and regulations. It is obvious that an authority which authorizes the repeal of a portion of an act of Parliament, ought to be extremely limited in its nature.

Majesty King George the Third, intituled "An Act to promote Trade and Manufactures by regulating and encouraging Partnerships."

21 & 22 Geo. 3, c. 46. (I.)

LXV. And forasmuch as great injury has been inflicted upon the public by companies falsely pretending to be patronized or directed or managed by eminent or opulent persons; now for the purpose of preventing such false pretences, be it enacted, with regard to every company or pretended company whatsoever, whether registered or not, and whether now existing or not, That if any person shall make any such false pretences, knowing the same to be false, in any advertisement or other paper, whether printed or written, and whether published in any newspaper, or handbill, or placard, or circular, then every such person shall forfeit for every such offence a sum not exceeding ten pounds.

Punishment for pretences as to patronage, &c.

LXVI. Provided always, and be it enacted, That every judgment and every decree or order which shall be at any time after the passing of this act obtained against any company completely registered under this act, except companies incorporated by act of Parliament or charter, or companies the liability of the members of which is restricted by virtue of any letters patent, in any action, suit, or other proceeding prosecuted by or against such company in any court of law or equity, shall and may take effect and be enforced, and execution thereon be issued, not only against the property and effects of such company, but also, if due diligence shall have been used to obtain satisfaction of such judgment, decree, or order by execution against the property and effects of such company, then against the person, property, and effects of any shareholder for the time being, or any former shareholder of such company, in his natural or individual capacity, until such judgment, decree, or order shall be fully satisfied; provided in the case of execution against any former shareholder, that such former shareholder was a shareholder of such company at the time when the contract or engagement for which such judgment, decree, or order may have been obtained was entered into, or became a shareholder during the time such contract or engagement was unexecuted or unsatisfied, or was a shareholder at the time of the judgment, decree, or order being obtained; provided also, that in no case shall execution be issued on such judgment, decree, or order against the person, property, or effects of any such former shareholder of such company after the expiration of three years next after the person sought to be charged shall have ceased to be a shareholder of such company.

Effect of judgments against a company and shareholders.

Former shareholders.

No execution against former shareholders beyond three years after ceasing to be a shareholder.

LXVII. Provided always, and be it enacted, That every person against whom, or against whose property or effects, execution upon any judgment, decree, or order obtained as aforesaid shall have been issued as aforesaid, shall be entitled to recover against such company all loss, damages, costs, and charges which such person may have incurred by reason of such execution; and that, after due diligence used to obtain satisfaction thereof against the property and effects of such company, such person shall be entitled to contribution for so much of such loss, damages, costs, and charges as shall remain unsatisfied, from the several other persons against whom execution upon such judgment, decree, or order, obtained against such company, might also have been issued under the provision in that behalf aforesaid; and that such contribution may be recovered from such

Re-imbursement of shareholders against whom execution issued.

Contribution by other shareholders.

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persons as aforesaid in like manner as contribution in ordinary cases of copartnership.

Proceedings in execution against the person or property of a shareholder.

LXVIII. And be it enacted, That in the cases provided by this act for execution on any judgment, decree, or order in any action or suit against the company, to be issued against the person or against the property and effects of any shareholder or former shareholder of such company, or against the property and effects of the company, at the suit of any shareholder or former shareholder, in satisfaction of any monies, damages, costs, and expenses paid or incurred by him as aforesaid in any action or suit against the company, such execution may be issued by leave of the court, or of a judge of the court, in which such judgment, decree, or order shall have been obtained, upon motion or summons for a rule to shew cause, or other motion or summons consistent with the practice of the court, without any suggestion or scire facias in that behalf; and that it shall be lawful for such court or judge to make absolute or discharge such rule, or allow or dismiss such motion, (as the case may be), and to direct the costs of the application to be paid by either party, or to make such other order therein as to such court or judge shall seem fit; and in such cases such form of writs of execution shall be sued out of the courts of law and equity respectively for giving effect to the provision in that behalf aforesaid as the judges of such courts respectively shall from time to time think fit to order; and the execution of such writs shall be enforced in like manner as writs of execution are now enforced: provided that any order made by a judge as aforesaid may be discharged or varied by the court, on application made thereto by either party dissatisfied with such order: provided also, that no such motion shall be made, nor summons granted, for the purpose of charging any shareholder or former shareholder, until ten days' notice thereof shall have been given to the person sought to be charged thereby.

Alteration of orders by the court.

Notice.

Recovery of penalties:

Proceedings before two justices.

LXIX. And be it enacted, That all penalties and forfeitures inflicted or authorized to be imposed by this act, and all costs and expenses for which any person may be liable under this act or by virtue of any bye-law, and the recovery of which has not been otherwise specially hereinbefore provided, shall and may be recovered, by any person who shall proceed for the same, before any two of her Majesty's justices of the peace of the county, city, or place where the offender or person liable to pay such costs or expenses shall reside, or where the offence shall be committed.

Appropriation of penalties.

LXX. Provided always, and be it enacted, That all penalties and forfeitures recovered under this act, and not otherwise specially appropriated, shall be applied as follows; one half thereof shall be paid to the person who shall sue or proceed for the same, and the other half to her Majesty's use, and shall be paid to the sheriff of the county, city, or town where the same shall have been imposed; and that all convictions before justices shall be returned to the court of quarter sessions under the provisions of an act passed in the third year of the reign of his late Majesty King George the Fourth, intituled "An Act for the more speedy Return and levying of Fines, Penalties, and Forfeitures, and Recognizances estreated," and shall be paid to the sheriff of the county, city, or town, and shall be duly accounted for by him.

3 Geo. 4, c. 46.

Summons in the

LXXI. And be it enacted, That in all cases in which any penalty

or forfeiture or any costs or expenses are recoverable before two justices of the peace under this act, it shall and may be lawful for any one justice of the peace to whom complaint shall be made of any such offence to summon the party complained of, and the witnesses on each side, before any such two justices; and at the time and place mentioned in such summons, or at any adjournment of such summons, the said two justices may hear and determine the matter of such complaint, and upon due proof thereof, either by confession of the party or by the oath of one or more credible witness or witnesses, give judgment or sentence on such complaint with costs, to be allowed by such justices, although no information in writing shall have been exhibited or taken; and all such proceedings by summons without information shall be as good, valid, and effectual to all intents and purposes as if an information in writing had been exhibited; and all penalties, forfeitures, and costs so adjudged may be levied by distress and sale of the goods and chattels of the party offending, by warrant under the hand and seal of any one justice; and in default of such distress the offender may be committed to prison by any one justice, by warrant under his hand and seal, there to remain for any time not exceeding three months, unless such penalties, forfeitures, and costs shall be sooner paid.

Recovery of penalties.

Proceedings.

LXXII. And be it enacted, That if any person shall be summoned as a witness to give evidence before such justices of the peace touching any matter which such justices are hereby authorised to inquire into, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such neglect or refusal, to be allowed by such justices, or appearing shall refuse to be examined on oath and give evidence before such justices, then every such person shall forfeit for every such offence a sum not exceeding five pounds, to be levied and paid in such manner and by such means as are hereinbefore directed as to other penalties recoverable before justices under this act.

Compulsory attendance of witnesses.

LXXIII. And be it enacted, That every proceeding for any offence punishable on summary conviction by virtue of this act shall be commenced within six months after the commission of the offence, and not after.

Limitation of proceedings for penalties.

LXXIV. And be it enacted, That if any person shall think himself aggrieved by the judgment of such justices, he may, within one month next after such conviction, and upon giving ten days' notice of appeal in writing to the party in whose favour such judgment shall have been given, stating the nature and grounds of appeal, and upon entering into recognizances with two sufficient sureties to the amount of the value of such penalty and costs, together with such further costs as shall be awarded in case such judgment shall be affirmed, appeal to the next general quarter sessions of the peace for the county, city, or place where such conviction shall have been made; and the justices at such sessions are hereby empowered to summon and examine witnesses on oath, and to hear and finally determine the matter of such appeal, and to award such costs as the court shall think reasonable to the party in whose favour such appeal shall be determined.

Appeal to quarter sessions.

Proceedings.

LXXV. And be it enacted, That no conviction or other proceeding before justices under this act shall be set aside for want of form, nor be removed by certiorari or otherwise into any of her Majesty's superior courts of record.

Informalities.

No certiorari.

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Recovery of penalties by action.

Specification of amount.

LXXVI. And be it enacted, that in any case to which a penalty is annexed by this act, the whole or any part of such penalty may be recovered by action of debt in any court now or hereafter having competent jurisdiction, by any person who shall sue for the same; and that in every such action for the recovery of such penalty, so much of such penalty as is sought to be recovered shall be endorsed on the writ of summons, and the plaintiff shall not be entitled to recover a greater sum than the sum so endorsed; and if the party suing for any such penalty recover the same or any part as aforesaid, he shall be entitled to full costs of suit.

Actions, &c., for penalties to be in the name and with the consent of the Attorney-General; otherwise void.

LXXVII. And be it enacted, That it shall not be lawful for any person to commence or prosecute any action, bill, plaint, information, or prosecution in any of her Majesty's superior courts, for the recovery of any penalty or forfeiture incurred by reason of any offence committed against this act, unless the same be commenced or prosecuted in the name and with the consent of her Majesty's Attorney-General; and that if any action, bill, plaint, information, or prosecution, or any proceeding before any justices as aforesaid, shall be commenced or prosecuted in the name of any other person than is in that behalf before mentioned, the same shall be and are hereby declared to be null and void.

Authentication of acts by committee of privy council for trade.

LXXVIII. And be it enacted, That with regard to every act, instrument, or writing by this act required or authorized to be done or to be made or executed by the committee of privy council for trade, that if the same purport to be so done, made, or executed by or on behalf of the said committee, and be signed by one of the secretaries of the said committee, and (if it require a seal) be sealed by the seal of the said committee, then it shall be deemed to be sufficiently done, made, or executed, to all intents and purposes.

Annual report to Parliament.

LXXIX. And be it enacted, That it shall be the duty of the registrar of joint stock companies to make a report annually to the said committee of privy council for trade, setting forth,—

1. A list of companies provisionally registered during the past year:
2. A list of companies completely registered during the past year:
3. A list of cases in which application shall have been made for the enforcement of penalties for failure to register, and the proceedings, whether by prosecution or otherwise, taken in consequence of such applications, and the results of such proceedings:
4. A list of companies which shall have been provisionally registered, but which have not obtained complete registration.
5. A return of the regulations made by the said committee with regard to the returns required to be made by companies:
6. A return of persons appointed to the office of registrar of joint-stock companies, and other officers and clerks, and of their salaries or other remuneration, and of the rules made for the regulation of the said office:
7. A return of the amount of all fees paid for certificates of provisional or complete registration, and for every other purpose:
8. A return of the scale of fees appointed by the commissioners of her Majesty's Treasury, for the services to be performed by the registrar, and of the respective amounts of such fees:
9. A return of the cases in which the companies had failed to appoint auditors, and of the proceedings taken thereon:

10. A return of prosecutions under this act for any offences not hereinbefore specified:
11. A return of the number of bankruptcies of joint-stock companies, and of the amount of the debts and assets of such companies respectively:
12. A return of modifications made by the committee of privy council for trade, in pursuance of this act, in the conditions and regulations to be observed by companies, whether existing or future:

And that, within six weeks after the meeting of Parliament next after the first day of January in every year, such report shall be laid before both Houses of Parliament.

Amendment of act.

LXXX. And be it enacted, That this act may be amended or repealed by any act to be passed in this present session of Parliament.

SCHEDULES TO WHICH THIS ACT REFERS (*a*).

SCHEDULE (A).—*See* § 7.

List of Purposes for which Provision is required to be made by the Deed of Settlement of a Company, before such Company can obtain a Certificate of complete Registration.

I.—*For the holding of Meetings, and the Proceedings thereat; viz.*

1. For holding ordinary general meetings of the company once at the least in every year, at some appointed place and time.
2. For holding extraordinary meetings, either upon the convening of the directors of the company, or upon the requisition of not less than five shareholders.
3. For the adjournment of meetings.
4. For the advertisement and notification of meetings, and the business to be transacted thereat.
5. For defining the business which may be transacted at meetings, ordinary and extraordinary, or at adjournments thereof.
6. For the appointment of the chairman at any meeting of the company.
7. For ensuring that each shareholder shall have a vote; and where it is not provided that each shareholder is to have a vote in respect of each share, the appointment of the number of votes to be given by shareholders in respect of any number of shares held by them.
8. For enabling guardians, trustees, and committees to vote in respect of the interests of infants, cestui que trusts, lunatics, and idiots.
9. For ascertaining what shall be the majorities or numbers of votes requisite to carry all or any questions, and where a simple majority is to decide.
10. For prescribing the mode and form of the appointment of proxies to

(*a*) See also the forms issued by the registrar, post.

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vote in the place of absent shareholders, and for limiting the number of proxies which may be held by any one person.

11. For determining questions where the votes are equally divided, whether by the casting-vote of the chairman or otherwise.

II.—*For the Direction of the Execution of the Affairs of the Company, and the Registration of its Proceedings; viz.*

12. For prescribing the maximum number of directors to be appointed; the number of shares or the amount of interest by which they are to be qualified; the period for which they are to hold office, so that at least one-third of such directors, or the nearest number to one-third, shall retire annually, subject to re-election, if thought fit; and for the determination of the persons who shall so retire in each year.

13. For filling up vacancies in the office of the directors as they occur; but not so as to enable the board of directors (if the filling up be assigned to them) to fill up such vacancy for a longer period than until the next general meeting of the company.

14. For the continuance in office of directors in default of election of new directors.

15. For regulating the meetings of directors, the quorum thereof, the proceedings thereat, and the adjournment thereof.

16. For recording the attendances of directors, and reporting the same to the shareholders.

17. For the determination of questions upon which the votes of the directors may be equally divided.

18. For the appointment of a person to take the chair of the directors, and for supplying any vacancy in the office of chairman.

19. For the appointment of the chairman of the directors at meetings at which the permanent chairman may not be present.

20. For regulating the appointment, by the directors, of officers, clerks, and servants.

21. For recording the proceedings of the directors.

22. For keeping and entering of minutes of such proceedings.

23. For ensuring the safe custody of the seal of the company, and for regulating the authority under which it is to be used.

24. For providing for the remuneration of the auditors of the accounts of the company.

25. For providing for the appointment of a secretary or clerk (if any) of the directors.

26. For providing for the receipt, custody, and issue of monies belonging to the company.

27. For providing for the keeping of books of account, and for periodically balancing the same.

28. For keeping the records and papers of the company.

29. For prescribing and regulating the duties and qualifications of officers.

30. For determining what books of accounts, books of registry, and other documents may be inspected by the shareholders of the company, and for regulating such inspection.

III.—*For the Distribution of the Capital of the Company into Shares, or for the Apportionment of the Interest in the Property of the Company; viz.*

31. For determining whether calls or instalments of payments (if any) are to be made in certain amounts; and at fixed periods; and if so, what amounts and at what periods.

32. For determining whether, on failure to pay any instalments or calls, the

share shall or shall not be forfeited; and if forfeited, whether, and on what conditions, the property in such share may be recovered by the shareholder.

33. For determining whether, and under what circumstances, and on what conditions, the capital of the company may be augmented, by the conversion of loans into capital or otherwise, or by the issue of new shares or otherwise.

34. For determining whether the amount of new capital shall or shall not be divided so as to allow such amount to be apportioned amongst the existing shareholders.

IV.—*For the borrowing of Money; viz.*

35. For determining whether the company may borrow money, and if so, whether on bond or mortgage, or any other and what security.

36. For determining whether the directors may contract debts in conducting the affairs of the company, and if so, whether to any definite extent.

37. For determining whether, and to what extent, the directors may make or issue promissory notes.

38. For determining whether, and to what extent, the directors may accept bills of exchange.

SCHEDULE (B.)—*See* § 7.

Certificate required to be endorsed on the Deed of Settlement, and signed by Two Directors.

We do hereby certify that the within-written deed is the deed of settlement of company, and that, to the best of our knowledge, the particulars therein contained are correctly set forth.

SCHEDULE (C.)—*See* § 4.

Return made pursuant to the Joint Stock Companies Registration and Regulation Act, Viet. c. (a), 1844.

FOR PROVISIONAL REGISTRATION.

Name and Business of the Company.

Name of the proposed Company.	Business or Purpose.	Place of Business (if any).

(*a*) Sic in the statute.

Promoters of the Company.

Names.	Occupations.	Places of Business (if any).	Places of Residence.

*** The names of the provisional officers may be added to this return under a separate head, and the subscribers may be given in a similar manner.

Provisional Committee or Provisional Directors.

Names.	Occupations.	Places of Business (if any).	Places of Residence.	Signature of Consent to act on Committee or as a Director.

Dated this day of , 18 .

[*Signature.*]

SCHEDULE (D.)

Return made pursuant to the Joint Stock Companies Registration and Regulation Act, Vict. c. , 1844.

Change of Place of Business.

Name of Company.	Business or Purpose.	Former Place [*or* principal Place, *if more than One*] of Business.	Present Place [*or* principal Place] of Business.

[*Date.*] [*Signature.*]

SCHEDULE (E.)—*See* § 11.

Return made pursuant to the Joint Stock Companies Registration and Regulation Act, Vict. c. , 1844.

Transfer of Shares.

Name of Company.	Business or Purpose.	Place [*or* principal Place. *if more than One*] of Business.	
Name and Place of Abode of Person by whom Transfer is made.	Name and Place of Abode of Person to whom Transfer is made.	Distinctive Numbers of the Shares transferred.	Date of Transfer.

[*Date.*] [*Signature.*]

SCHEDULE (F.)—*See* § 12.

Return made pursuant to the Joint Stock Companies Registration and Regulation Act, Vict. c. , 1844.

Change of Shareholders.

Name of Company.	Business or Purpose.	Place [*or* principal Place, *if more than One*] of Business.

Persons known to have ceased to be Shareholders (except by Transfer) since the last Return, dated the Day of .

Name.	Place of Abode.	Distinctive Number of Shares.

Persons known to have become Members (except by Transfer) since the last Return, dated the Day of .

Name.	Place of Abode.	Distinctive Number of Shares.

Persons whose Names have become changed by Marriage or otherwise.

Former Name.	Former Place of Abode.	Present Name.	Present Place of Abode.	Distinctive Number of Shares.

[*Date.*] [*Signature.*]

SCHEDULE (G.)—*See* § 56.

Return made pursuant to the Joint Stock Companies Registration and Regulation Act, Vict. c. , 1844.

For Registration of existing Companies, Name of the Company, Business, &c.

Name of the Company.	Business or Purpose.	Place of Business, with the Branches (if any).

SCHEDULE (H.)

Return made pursuant to the Joint Stock Companies Registration and Regulation Act, Vict. c. , 1844.

CORRECTED RETURN.

[*Copy of former incorrect Return.*]

Copy.

Amended return, with correct names and descriptions [*in such of the preceding forms as are applicable to the case under the provisions of the foregoing Act*].

[*Date.*] [*Signature.*

SCHEDULE (I.)—*See* § 50.

CERTIFICATE OF SHARE.

The company, first completely registered on the day of 18 .

Number

This is to certify, that A. B., of , is the proprietor of the share, number , of the company, subject to the regulations of the said company, and that up to this day there has been paid up, in respect of such share, the sum of . Given under the common seal of the said company, the day of , in the year 18 .

[*Signature of Secretary.*] (L. S.)

SCHEDULE (K).—*See* § 53.

TRANSFER OF SHARES.

I, A. B. , of , in consideration of the sum of paid to me by C. D. , of , do hereby transfer to the said share [*or* shares], numbered in the undertaking called the company, to hold unto the said , his executors, administrators, and assigns [*or* successors and assigns], subject to the several conditions on which I hold the same at the time of the execution hereof. And I, the said , do hereby agree to take the said share [*or* shares], subject to the same conditions, and to the provisions of the deed or deeds of settlement of the said company. As witness our hands and seals, the day of

[*Signature.*]

APPENDIX.
STATUTES.

CAP. CXI.

An Act for facilitating the Winding up the Affairs of Joint-Stock Companies unable to meet their pecuniary Engagements.

[*5th September*, 1844.

Whereas it is expedient to extend the remedies of creditors against the property of such joint-stock companies or bodies as hereinafter mentioned, when unable to meet their pecuniary engagements, and to facilitate the winding up of their concerns; and it may also be for the benefit of the public to make better provision for discovery of the abuses that may have attended the formation or management of the affairs of any such companies or bodies, and for ascertaining the causes of their failure: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That if any commercial or trading company now or at any time hereafter incorporated by charter or act of Parliament, or any company or body of persons now or at any time hereafter associated together for any commercial or trading purposes, and to which any privilege or privileges, or power or powers shall, before or after the passing of this act, have been granted under the authority of the statute made and passed in the first year of the reign of her present Majesty, intituled "An Act for better enabling her Majesty to confer certain Powers and Immunities on trading and other Companies," or by any Act of Parliament, or any commercial or trading company or body which by the said statute made and passed in the first year of the reign of her present Majesty is to be considered as subsisting, and to be subject to the provisions of the said statute in manner therein mentioned, or any company or body of persons now or at any time hereafter associated together for any commercial or trading purposes (*a*), and registered either provisionally or completely under the provisions of any act passed or to be passed in the present session of Parliament, for the registration and regulation of joint-stock companies or any joint-stock company now existing and comprehended within the definition therein contained of a joint-stock company (*a*), shall commit any act which by this act is to be deemed an act of bankruptcy on the part of any such company or body, a fiat in bankruptcy may issue against such company or body by the name or style of the said company or body, upon the petition of any creditor or creditors of such company or body (whether a member or members of such company or body or not), to such amount as is now by law requisite to support a fiat in bankruptcy; and the court authorized to act in the prosecution of such fiat, and all persons acting under such fiat, may proceed thereon in like manner as against other bankrupts, subject always to the provisions hereinafter made.

If any incorporated commercial or trading company, or any other body of persons associated together for commercial or trading purposes, as herein described, shall commit any act which is hereby deemed an act of bankruptcy on the part of such company, a fiat in bankruptcy may issue against the same, and be prosecuted in like manner as against other bankrupts, subject to the provisions hereinafter made.

II. Provided always, and be it enacted, That the bankruptcy of any such company or body in its corporate or associated capacity (as the case may be) shall not be construed to be the bankruptcy of any member of such company or body in his individual capacity.

Bankruptcy of company not to be construed to be the bankruptcy of any member individually.

(*a*) By the Railway Clauses Consolidation Act, 8 Vict. c. 20, ss. 86 and 89, post, railway companies are empowered to carry goods and passengers; and by 5 & 6 Vict. c. 122, s. 10, carriers are deemed traders within the meaning of the statutes relating to bankrupts. And see the proviso at the end of sect. 2, 6 Geo. 4, c. 16; also page 16 of the text in this work.

Service of adjudication of bankruptcy on company, and surrender, how to be made.

III. And be it enacted, That the duplicate of the adjudication of bankruptcy under a fiat against any such company or body shall be served on the person who was at the date of such fiat a chief clerk or secretary or registrar of such company or body, or (if there be no such person) on any person who was at such date a director of such company or body, personally, or by leaving the same at the head office for the time being of such company or body; and the surrender to such fiat for the purpose of consenting to, and the consent to, the advertisement of such adjudication before the expiration of the five days allowed for shewing cause against the validity thereof, may be made on behalf of such company or body by such person; provided such person shall, at the time of such surrender, make a deposition, and swear that he was, at the date of such fiat, such chief clerk or secretary, or registrar, as the case may be, and that he is authorized to make such surrender.

Declaration of insolvency in pursuance of a resolution of the board of directors under the common seal of the company, or signed by the chairman, and attested by the solicitor of the company, and filed in the office of the secretary of bankrupts, to be an act of bankruptcy.

IV. And be it enacted, That if any such company or body shall, by virtue of a resolution to be duly passed in that behalf at a board of directors of such company or body duly summoned for that purpose, file or cause to be filed in the office of the Lord Chancellor's secretary of bankrupts a declaration in writing, in the form specified in the Schedule (A.) No. 1. hereunto annexed, that the said company or body is unable to meet its engagements, and also a minute of such resolution in the form specified in the said Schedule (A.) No. 2., such declaration and minute of resolution respectively being under the common seal of such company or body, and if such company or body have no common seal, then signed by the chairman of the board of directors who was present at the passing of such resolution, and in either case such declaration and minute of resolution being respectively attested by the attorney or solicitor of the said company or body for the time being, every such company or body shall be deemed thereby to have committed an act of bankruptcy at the time of filing such declaration, provided a fiat in bankruptcy shall issue against such company or body within two calendar months from the filing of such declaration; and a copy of such declaration and minute of resolution respectively, purporting to be certified by the said secretary, or his clerk, as a true copy, shall be received as evidence of such declaration and minute of resolution respectively having been filed by such company or body, and that upon such evidence being given, and upon proof by the attesting witness of the sealing or signature as the case may be of the said declaration and minute of resolution, no further evidence shall be required of the said act of bankruptcy.

Company not paying, securing, or compounding for a judgment debt, upon which the plaintiff might sue out execution, within fourteen days after notice requiring payment, an act of bankruptcy.

V. And be it enacted, That if any plaintiff shall recover judgment in any action personal for the recovery of any debt or money demand, in any of her Majesty's courts of record, against any such company or body, or against any person duly authorized to be sued as the nominal defendant on behalf of such company or body, and shall be in a situation to sue out execution upon such judgment, and there be nothing due from such plaintiff by way of set-off, or which may be legally set off against such judgment, and such company or body shall not, within fourteen days after notice in writing, served upon the said company or body, by service of the same on a chief clerk or secretary or registrar of the said company or body, or (if there be no officer of such denomination) on any director of the said company or body personally, or by the same having been left at the head office for the time being of such company or body, requiring immediate pay-

ment of such judgment debt, pay, secure, or compound for the same to the satisfaction of such plaintiff, such company or body shall be deemed to have committed an act of bankruptcy on the fifteenth day after service of such notice: Provided always, that if such execution shall in the meantime be suspended or restrained by any rule, order, or proceeding of any court of justice having jurisdiction in that behalf, no further proceeding shall be had on such notice, but that it shall be lawful nevertheless for such plaintiff, when he shall again be in a situation to sue out execution on such judgment, to proceed again by notice in manner before directed.

Company disobeying order of any court of equity, &c., for payment of money after service of order for payment on a peremptory day fixed, an act of bankruptcy.

VI. And be it enacted, That if any decree or order shall be pronounced in any cause depending in any court of equity, or any order shall be made in any matter of bankruptcy or lunacy against any such company or body, or against any person duly authorized to be sued as the nominal defendant on behalf of such company or body, ordering any sum of money to be paid by such company or body, and such company or body shall disobey such decree or order, the same having been served upon such company or body, by service of the same on a chief clerk or secretary or registrar of the said company or body, or (if there be no officer of such denomination) on any director of the said company or body, personally, or by the same having been left at the head office for the time being of such company or body, the person entitled to receive such sum under such decree or order, or interested in enforcing the payment thereof pursuant thereto, may apply to the court by which the same shall have been pronounced, to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such company or body, being served in manner aforesaid with such last-mentioned order fourteen days before the day therein appointed for payment of such money, shall neglect to pay the same, such company or body shall be deemed to have committed an act of bankruptcy on the fifteenth day after the service of such order.

Creditor filing an affidavit of debt in one of the superior courts, and issuing a writ of summons thereon, if the company do not, within a month, pay, secure, or compound to the satisfaction of the creditor, or satisfy a judge of their intention to defend on the merits and enter an appearance to the action, an act of bankruptcy.

VII. And be it enacted, That if any creditor or creditors of any such company or body to such amount as is now by law requisite to support a fiat shall file an affidavit or affidavits in any of her Majesty's superior courts of law at Westminster, that such debt or debts is or are justly due to him or them respectively from the said company or body, and that such company or body, as he or they verily believe, is a commercial or trading company, or body incorporated or associated as aforesaid (as the case may be), and shall sue out of the same court a writ of summons against such incorporated company, or against any person duly authorized to be sued as the nominal defendant on behalf of such associated company or body, as the case may be, and serve a chief clerk or secretary or registrar of such incorporated or associated company or body, as the case may be, or (if there be no officer of such denomination) any director of the said company or body, personally, with a copy of such summons, if such company or body shall not, within one calendar month after service of such summons, pay, secure, or compound for such debt or debts to the satisfaction of such creditor or creditors, or make it appear to the satisfact of one of the judges of the court out of which such writ of summons shall issue that it is the intention of such company to defend the action upon the merits, and within one calendar month next after service of such summons cause an appearance or appearances to be entered to such action or actions in the proper court or courts in

which the same shall have been brought, every such company or body shall be deemed to have committed an act of bankruptcy from the time of the service of such summons.

Assignees of the estate of a company may maintain action to recover a debt; and any person may claim under a fiat against a company any debt due on the balance of accounts.

VIII. And be it enacted, That it shall be lawful for the assignees of the estate and effects of any such company or body to maintain any action, suit, or other proceeding against any person or persons (whether a member or members of such company or body or not) to recover any debt or demand on behalf of the said company or body against such person or persons, and for any person or persons to prove or claim under the fiat against such company or body such debt or demand as may be due to him or them (whether a member or members of such company or body or not) on the balance of accounts between him or them and the said company or body.

Member's share not to be set off against a demand which the assignees of the estate and effects of a company adjudged bankrupt may have against such member.

IX. Provided always, and be it enacted, That no claim or demand which any member of any such company or body may have in respect of his share of the capital or joint stock thereof, or of any dividends, interest, profits, or bonus payable or apportionable in respect of such share, shall be capable of being set off, either at law or in equity, against any demand which the assignees of the estate and effects of such company or body may have against such member on account of any other matter or thing whatsoever, but all proceedings in respect of such matter or thing may be carried on as if no claim or demand existed in respect of such capital or joint stock, or of any dividends, interest, profits, or bonus payable or apportionable in respect thereof.

No action, &c. by a creditor of a company, so far as concerns his recourse against the person or property of any individual member, to affect his right to issue or prove under a fiat against the company for any debt remaining unsatisfied; and a fiat, or a proof or proceeding thereon, not to affect any action by a creditor, so far as concerns his recourse to the person or property of any individual member.

X. And be it enacted, That no action, suit, or other proceeding by any creditor or creditors of any such company or body shall, so far as concerns or may be necessary for the recourse of such creditor or creditors against the person, property, or effects of any member or members thereof for the time being, or any former member or members thereof, be deemed to prejudice or in any manner affect the right of such creditor or creditors to sue out or prosecute a fiat against such company or body, or his or their right to prove or claim under any fiat against such company or body any debt or demand remaining unsatisfied; and that no such fiat, or proof or proceeding thereunder, shall be deemed to prejudice or in any manner affect the right of any creditor or creditors of such company or body to institute or maintain any action, suit, or other proceeding, so far as concerns or may be necessary for the recourse of such creditor or creditors, against the person, property, or effects of any member or members thereof for the time being, or any former, member or members thereof: Provided always, that nothing herein contained shall prevent remedy against copartners: Provided also, that no execution in respect of any debt or demand proveable under the fiat against any such company or body adjudged bankrupt shall be issued against the person, property, or effects of any member or members for the time being of such company or body, or any former member or members thereof, until after such debt or demand shall have been proved under such fiat, nor shall any such execution be issued after the appointment of a receiver in manner hereinafter mentioned, without leave of the High Court of Chancery.

The law and practice in bankruptcy to extend, so far as applicable, to fiats under this act.

XI. And be it enacted, That the law and practice in bankruptcy now in force shall extend, so far as the same may be applicable, to this act, and to fiats in bankruptcy issued by virtue of this act, and to all proceedings under such fiats save and except as may be otherwise directed by this act.

APPENDIX.

STATUTES.

The court may order the directors of a company adjudged bankrupt, &c., to prepare and file a balance sheet and accounts, and to make oath of the truth thereof; and the court may make allowance out of the estate for the preparation thereof.

XII. And be it enacted, That it shall be lawful for the court authorized to act in the prosecution of a fiat in bankruptcy against any such company or body, at any time after the advertisement of the bankruptcy in the London Gazette, to order that the persons who were at the date of such fiat directors of such company or body, or such of them as such court in its discretion shall think fit, or if there be no directors then such members of the company as such court in its discretion shall think fit, shall prepare such balance-sheet and accounts, and in such form as such court shall direct, and shall subscribe such balance-sheet and accounts, and file the same in such court, and deliver a copy therof to the official assignee ten days at least before the last examination under such fiat; and such balance-sheet and accounts, before such last examination, may be amended from time to time as occasion shall require, and such court shall direct; and such persons shall make oath of the truth of such balance-sheet and accounts whenever they shall be duly required so to do; and such court may from time to time make such allowance out of the estate of such company or body for the preparation of such balance-sheet and accounts, and to such person or persons, as such court shall think fit.

Persons ordered by the court to prepare the balance sheet to be under the like obligation to surrender at the last examination under the fiat, and to submit to be examined, &c., and to incur such danger or penalty for not conforming, &c., as is now provided against a bankrupt.

XIII. And be it enacted, That every such person ordered as aforesaid to prepare such balance-sheet and accounts shall be under the like obligation to surrender to the court authorized to act in the prosecution of such fiat, at the hour and upon the day allowed for finishing the last examination under such fiat, and to sign and subscribe such surrender, and to submit to be examined before such court from time to time upon oath, and to make a full and true discovery of the estate and effects of such company or body, and shall incur such danger or penalty for not surrendering, or for not signing or subscribing such surrender, or for not coming before the court, or for refusing to be sworn and examined, or for not fully answering to the satisfaction of the court, or for refusing to sign or subscribe his examination, or for not delivering up at the last examination under such fiat all such part of such estate of such company or body, and all books, papers, and writings relating thereunto, as shall be in his possession, custody, or power, or for removing, concealing, or embezzling any part of such estate to the value of ten pounds or upwards, or any books of account, papers, or writings relating thereto, with intent to defraud the creditors of such company or body, as is now by the law in force concerning bankrupts provided as to a bankrupt for not conforming to the like requisitions for the discovery of and in relation to the estate and effects of such bankrupt.

Persons ordered to prepare the balance sheet to have the same freedom from arrest, &c., as a bankrupt.

XIV. And be it enacted, That every such person so ordered as aforesaid to prepare such balance-sheet and accounts shall have such freedom from arrest and imprisonment in coming to surrender to such fiat, and such discharge, if arrested in coming to surrender, as a bankrupt now has, or may have under a fiat in bankruptcy against him; and such person or persons, if in prison, may be brought before such court, by warrant, in like manner as such bankrupt now may.

The court before adjudication, may summon any person, whether a member of the company or not, to give evidence as

XV. And be it enacted, That it shall be lawful for the court authorized to act in the prosecution of a fiat in bankruptcy, issued against any such company or body, before adjudication, to summon before such court any person (whether a member of such company or body or not) whom such court shall believe capable of giving any

information concerning the commercial dealings or trading of, or any act or acts of bankruptcy, within the meaning of this act, committed by such company or body, and also to require such person so summoned to produce any books, papers, deeds, writings, and other documents in the custody, possession, or power of such person which may appear to such court to be necessary to establish such dealings, trading, or act or acts of bankruptcy; and it shall be lawful for such court to examine every such person upon oath, by word of mouth or interrogatories in writing, concerning the dealings or trade of, or any act or acts of bankruptcy, within the meaning of this act, committed by such company or body; and it shall also be lawful for such court, after adjudication, to summon before it any person (whether a member of such company or body or not) known or suspected to have any of the estate of such company or body in his possession, or who is supposed to be indebted to such estate, or any person (whether a member of such company or body or not) whom such court believes capable of giving information concerning any person or persons who was or were a member or members of such company or body at or before the date of the fiat, or concerning the trade, dealings, or estate of such company or body, or concerning any act or acts of bankruptcy, within the meaning of this act, committed by such company or body, or any information material to the full disclosure of the dealings of such company or body; and it shall be lawful for such court to examine, in manner aforesaid, every such person so summoned concerning the person of any such member, or concerning the trade, dealings, or estate of such company or body, and also to require every such person so summoned to produce any books, papers, deeds, writings, or other documents in his custody, possession, or power which may appear to such court necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which such court is authorized to inquire into; and every such person so summoned shall incur such danger or penalty for not coming before the court, or for refusing to be sworn and examined, or for not fully answering to the satisfaction of such court, or for refusing to sign or subscribe his examination, or for refusing to produce or for not producing any such book, paper, deed, writing, or document, as is now provided against persons summoned to be examined under a fiat in bankruptcy.

to the trading and any act of bankruptcy; and, after adjudication, the court may summon and examine any person who is suspected to have property of the company in his possession, or to be indebted to the company, &c., and compel him to produce books, &c.

XVI. And be it enacted, That where any person who, at or before the date of a fiat in bankruptcy issued against any such company or body, was a member of such company or body, shall be summoned to attend before the court authorized to act in the prosecution of such fiat, every such person shall have such costs and charges only (if any) as such court in its discretion shall think fit.

As to costs where a person summoned under a fiat against a company was a member thereof.

XVII. And be it enacted, That if any person who, at or before the date of the fiat against any such company or body, was a member of such company or body, but not being a person so ordered as aforesaid to prepare such balance sheet and account, of if any other person shall wilfully conceal any real or personal estate of any such company or body, and shall not within thirty days after the issuing of the fiat against such company or body discover such estate to the court authorized to act in the prosecution of such fiat, or to the assignees, every such person shall forfeit the sum of one hundred pounds, and double the value of the estate so concealed; and any person, other than a person having been a member of such company or body, who shall, after the time allowed for finishing the last exa-

Penalty on members (other than those who are ordered to prepare the balance sheet), and on other persons, wilfully concealing the estate of the company, 100*l.*, and double the value of the estate concealed; and allowance to persons, other than members of the company, for making discovery thereof.

mination under such fiat, voluntarily discover to such court or the assignees any part of the estate of such company or body not before come to the knowledge of the assignees, shall be allowed five pounds per centum thereupon, and such further reward as the major part in value of the creditors present at any meeting called for that purpose shall think fit to be paid out of the estate recovered on such discovery.

The court, after adjudication, may order any treasurer, &c., or solicitor or agent of the bankrupt, to deliver to the official assignee, or to the Bank of England, all monies and securities in his custody or power, which he is not by law entitled to retain as against the bankrupt or his assignees.

XVIII. And be it enacted, That, after the adjudication of bankruptcy under any fiat already issued or hereafter to be issued shall have been advertised in the London Gazette, it shall be lawful for the court authorized to act in the prosecution of such fiat to order any treasurer or other officer, or any attorney or solicitor, or other agent of the company or body, or person or persons, adjudged bankrupt under such fiat, to pay and deliver over to the official assignee appointed under such fiat, or to the Bank of England, or any of the branches thereof, to the credit of the accountant in bankruptcy, according to the rules now or hereafter in force with respect to payments into the Bank of England of monies due to any bankrupt's estate, all monies or securities for money in his custody, possession, or power, as such officer or agent, and which he is not by law entitled to retain as against the bankrupt or bankrupts, or his or their assignees.

If any person disobey any rule or order of the court duly made, the court to commit him to prison, there to remain until he conform, or until the court or Lord Chancellor shall otherwise order.

XIX. And it is hereby declared and enacted, That if any person shall disobey any rule or order of the court authorized to act in the prosecution of any fiat in bankruptcy, duly made by such court for enforcing any of the purposes and provisions of this act, or of any other act relating to bankruptcy or insolvency, now or hereafter to be in force, or made or entered into by consent of such person for carrying into effect any of such purposes or provisions, it shall and may be lawful for such court, by warrant under hand and seal, to commit the person so offending to the Queen's Prison, or to the common gaol of any county, city, or place where he shall be found or where he shall usually reside, there to remain without bail or mainprize until such person shall have fulfilled the duty required by such rule or order, or until such court or the Lord Chancellor shall make order to the contrary.

The court may direct the assignees of the estate of a company adjudged bankrupt to petition the Court of Chancery for directions for winding up the affairs of the company, upon which petition an order of reference may be made, and accounts taken, and upon the confirmation of the Master's report a receiver may be appointed.

XX. And be it enacted, That it shall be lawful for the court authorized to act in the prosecution of any such fiat in bankruptcy to direct the creditors' assignees of the estate and effects of any such company or body to apply to the High Court of Chancery, by petition in a summary way to the Lord Chancellor or the Master of the Rolls, praying that all such orders and directions may be given as shall be necessary for the final winding up and settling the affairs of such company or body, and to compel a just contribution from all the members of such company or body towards the full payment of all the debts and liabilities of such company or body, and of the costs of winding up and finally settling the affairs of such company or body; and that upon the hearing of such petition it shall be lawful for the said High Court of Chancery to refer it to one of the Masters of the High Court of Chancery to take all such accounts and make all such inquiries as shall be required for the purpose of ascertaining what sum of money in the whole, and what sums of money as proportionate parts of the whole, or what sum or sums of money from time to time on account, will (having regard to the deed of settlement of such company, and the calls, contributions, debts, or demands actually paid by the several and respective members thereof, and also having

regard to any proceedings in the court of bankruptcy, or any district court of bankruptcy), be necessary and proper to be raised by calls or contributions from the respective members of such company or body for the payment and satisfaction of all the debts and liabilities of such company or body, and also of all the costs of winding up and settling the affairs of the said company; and that the high Court of Chancery, upon confirmation of the Master's report made upon any such reference, or upon making such reference, or otherwise, may order the payment of the several and respective sums of money which by such report are found necessary and proper to be paid, and may refer it to the Master to appoint a receiver to collect and receive such sums of money, and either to pay the same into the Bank of England, in the name and to the account of the Accountant-General of the high Court of Chancery, to the credit of such company or body, and may, upon the petition of such assignees, order such sums of money to be paid in or towards satisfaction of the debts which by the proceedings in bankruptcy shall have been found to be due to the creditors of such company or body, and all persons having claims and demands thereon, and also in satisfaction of costs, or may order such receiver to pay such sums of money in satisfaction of such debts, claims, and demands, and costs, in the first instance.

The Court of Chancery may make order in individual claims of members in respect of the transactions of the company.

XXI. And be it enacted, That if it shall appear that any individual members of such company or body have claims against each other in respect of the affairs or transactions of such company or body, it shall be lawful for the Court of Chancery, upon the petition of any member of such company or body, alleging that he hath any such claim against any other member of the said company or body, to make all such orders as shall be just for the purpose of finally settling and determining such claim, and may order the payment of such sum of money (if any) as shall appear to be due in respect of any such claim.

The Lord Chancellor, with the advice and consent of the Master of the Rolls and Vice-Chancellors, to make rules and orders as to the form and mode of proceeding for settling and enforcing contribution to be made by members of company, and the practice to be observed by the Court of Chancery and the Masters in such proceeding.

XXII. And whereas the law is defective in the means of making the members of joint-stock companies contributaries for paying their debts in full, and in the means of giving relief where execution may have been had in respect of a debt due from any such company against one or a very few members of such company, and also in the means of adjusting the rights of the members of any such company amongst themselves, and finally winding up the affairs of such company; be it enacted, That it shall be lawful for the Lord Chancellor, with the advice and consent of the Master of the Rolls and the Vice-Chancellors for the time being, or any two of them, from time to time, and as often as circumstances shall require, to make and prescribe such rules and orders touching and concerning the form and mode of proceeding to be had and taken in the Court of Chancery for settling and enforcing the contribution to be paid by any member or members for the time being of any such company, or any former member or members thereof, or any real or personal representative, or other persons liable in that behalf, and the practice to be observed by such court in or relating to such proceeding, or any matters incident thereto, and the form and mode of proceeding to be had and taken before any one of the Masters of the said court, primarily or by reference from the said court, in any matter for or relating to contribution, as shall from time to time seem necessary and proper for the advancement of justice in such cases, and for adjusting and determining the rights and equities of the parties concerned, and for suing for and get-

ting in the assets, and for ascertaining and discharging the liabilities of such companies, and requiring the creditors thereof to claim their debts, and finally winding up the affairs thereof, with as little delay, expense, and uncertainty as possible: Provided always, that such rules and orders shall be laid before both Houses of Parliament within one month from the making thereof, if Parliament be then sitting, or, if Parliament be not then sitting, within one month from the commencement of the then next session of Parliament; and every rule and order so made shall be binding and obligatory, and be of like force and effect as if the provisions contained therein had been expressly enacted by Parliament.

The act 41 G. 3, (U. K.), c. 90, to extend to decrees or orders made by the Court of Chancery in any suit under this act.

XXIII. And be it enacted, That an act passed in the forty-first year of the reign of King George the Third, intituled "An Act for the more speedy and effectual Recovery of Debts due to his Majesty, his Heirs and Successors, in right of the Crown of the United Kingdom of Great Britain and Ireland, and for the better Administration of Justice within the same," shall extend to decrees or orders made by the said Court of Chancery in any suit, proceeding, or matter under or by virtue of this act.

Decrees or orders made under this act by the Court of Chancery may be registered in Scotland, and execution may be had as upon a decree interponed upon a bond, with a clause of registration.

XXIV. And be it enacted, That, on production of an office copy of any decree or order of the Court of Chancery made in any proceeding under or by virtue of this act, and of an affidavit that application has been duly made to the person mentioned in such decree or order for payment of the sum thereby ordered to be paid by him, and that default has been made in payment thereof, to one of the principal clerks of the Court of Session in Scotland, or his deputy, for registration there, such decree or order shall thereupon be registrable and registered there in like manner as a bond executed according to the law of Scotland, with a clause of registration therein contained, and execution shall and may pass upon a decree to be interponed thereto in like manner as execution passes upon a decree interponed to such bond, and shall have the like effect upon and against the person named in such decree or order of the said Court of Chancery as if he had executed such bond.

Previous to passing the last examination under a fiat against any such company or body adjudged bankrupt, it shall be the duty of the court authorized to act in the prosecution of such fiat, to inquire, by the examination of such person or persons as such court shall think fit, into the cause of the failure of such company or body; and after the passing of such last examination, or after the time allowed by such court for that purpose shall have elapsed, such court shall cause a copy of the balance sheet filed in the court under such fiat to be transmitted to the committee of Privy Council for Trade and Plantations, and such court shall at the same time certify in writing to the said committee what, in the opinion of such court, was the cause of the failure of such company or body, and shall have liberty to state any special circumstances relating to the formation or management of the affairs of such company or body, and shall cause to be annexed to such certificate a copy of the examination of any person or persons taken under such fiat, and which such court shall deem material, relating to the formation or management of the affairs of such company or body.

Previous to passing the last examination the court shall inquire into the cause of the failure of a company, and after the last examination shall cause a copy of the balance sheet to be transmitted to the Board of Trade, and certify the cause of the failure, and any special circumstances, and annex a copy of any examinations deemed material.

After the court shall have certified to the Board of Trade the cause

XXVI. And be it enacted, That, after the court shall have certified to the committee of Privy Council for Trade and Plantations the cause of the failure of any such company or body adjudged bankrupt, it

shall and may be lawful for her Majesty, her heirs and successors, upon the recommendation of the said committee, by any instrument in writing under her or their great seal of Great Britain, or privy seal, to signify her or their pleasure for revoking and making void, and thereby to revoke and make void, all the powers, privileges, and advantages at any time, by any charter or letters-patent or act of Parliament, granted to such company or body, and to determine the same; and thereupon the said powers, privileges, and advantages shall accordingly be revoked, and the same company or body shall be determined, without any inquisition, scire facias, or any matter or thing to make void or determine the same, anything in such charter or letters-patent or act of Parliament contained to the contrary notwithstanding.

Of the failure of such company, the queen, upon the recommendation of the Board of Trade, may revoke and make void any privileges granted to the company, and determine the company.

XXVII. And be it enacted, That, after the court shall have certified to the committee of Privy Council for Trade and Plantations the cause of the failure of any such company or body adjudged bankrupt, the said committee may, whenever it shall think fit, cause all the papers relating to such failure, and to the formation and management of such company or body, and to the conduct of any of the directors or other officers of the said company or body therein, or to any or either of such matters, to be laid before her Majesty's Attorney-General, who shall direct whether any and what proceedings shall be taken thereupon against any person who was a director or other officer of such company or body, or any other person; and any prosecution or other proceeding which shall be thereupon directed by the Attorney-General shall be conducted by or under the direction of the commissioners of her Majesty's Treasury.

After the court shall have certified to the Board of Trade the cause of the failure of any company adjudged bankrupt, the board may institute prosecutions in certain cases.

XXVIII. Provided always, and be it enacted, That, until the determination of such company or body by her Majesty, her heirs or successors, such company or body, and the persons who were officers thereof at the time of such determination, shall respectively be considered as subsisting, and as continuing such officers as aforesaid, for all the purposes for which the same was originally constituted, and that, notwithstanding such determination as aforesaid, the same shall be considered as subsisting and continuing respectively so long and so far as may be necessary for the winding up of the concerns of such company or body under the fiat issued against such company or body.

Until determination of company by the Crown, it shall be considered as subsisting for the original purposes, and, notwithstanding such determination, shall be considered as subsisting so far as necessary for winding up.

XXIX. And be it enacted, That, notwithstanding the determination of any company or body incorporated or associated within the meaning of this act, as the case may be, by any other means than as last aforesaid, such company or body, and the persons who were officers thereof at the time of such determination, shall respectively be considered as subsisting, and as continuing such officers as aforesaid, for all the purposes of this act, so long and so far as any matters relating to such company or body shall remain unsettled.

Notwithstanding determination of company in any other manner, the same to be considered as subsisting so long as any matters remain unsettled.

XXX. And be it enacted, That, if any person, being a member of any such company or body which shall be adjudged bankrupt, shall, after and with knowledge of an act of bankruptcy within the meaning of this act committed by such company or body, or in contemplation of the bankruptcy of such company or body, have destroyed, altered, mutilated, or falsified any of the books, papers, writings, or securities of such company or body, or made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud the creditors of such company or body, or to defeat the object of this or any other statute relating

Any member of a company adjudged bankrupt, with knowledge of or in contemplation of a bankruptcy, destroying or falsifying books, &c. of the company, or making false entries, &c., guilty of a misdemeanor.

to bankrupts, every such person shall be deemed to be guilty of a misdemeanour, and being convicted thereof shall be liable to be imprisoned in any common gaol or house of correction for any term not exceeding three years, with or without hard labour.

Construction of the act.

XXXI. And be it enacted, That, in construing this act, all powers given or duties directed to be performed by the Lord Chancellor may be performed by the Lord Keeper or Lords Commissioners of the Great Seal; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing, and bodies corporate as well as individuals; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and the words "fiat in bankruptcy" shall mean also and include any commission of bankrupt; unless (in the cases above specified) a different construction shall be provided, or the construction be repugnant to the subject-matter or context.

Commencement of act.

XXXII. And be it enacted, That this act shall commence and take effect on the first day of November next.

Act may be amended, &c. this session.

XXXIII. And be it enacted, That this act may be amended or repealed by any act to be passed in this present session of Parliament.

SCHEDULE TO WHICH THE FOREGOING ACT REFERS.

SCHEDULE (A).

No. 1.

Declaration of Insolvency by incorporated or associated Commercial or Trading Company.

By virtue of a resolution duly passed in that behalf, on the day of , at a board of directors of [*here state the name or style of the company*], duly summoned for that purpose, it is hereby declared, that the said company [*or*, "society," *&c., as the case may be*] is unable to meet its engagements.

Dated this day of , in the year .

[*Common seal of the company, or, if the company have no common seal, the signature of the chairman of the board of directors who was present at the passing of the resolution.*]

Witness *G. H.*, attorney [*or*, "solicitor"] of the Court of , and attorney [*or*, "solicitor"] of the said company, and attesting witness to the execution hereof as such attorney [*or*, "solicitor"].

SCHEDULE (A).

No. 2.

Minute of Resolution of a Board of Directors, of incorporated or associated Commercial or Trading Company, authorizing a Declaration of Insolvency.

A resolution was duly passed on the day of , at a board of directors of [*here state the name or style of the company*], duly summoned for that purpose, that the said company was then unable to meet its engagements, and that a declaration of insolvency should be forthwith filed in the office of the Lord Chancellor's Secretary of Bankrupts, in the form directed by the statute in that case made and provided.

[*Common seal of the company, or, if the company have no common seal, the signature of the chairman of the board of directors who was present at the passing of the resolution.*]

Witness *G. H.*, attorney [*or*, " solicitor "] of the Court of , and attorney [*or*, " solicitor "] of the said company, and attesting witness to the execution hereof as such attorney [*or*, " solicitor "].

CAP. XVI.

An Act for consolidating in one Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a Public Nature. [*8th May*, 1845.]

The Companies' Clauses Consolidation Act.

Whereas it is expedient to comprise in one general act sundry provisions relating to the constitution and management of joint-stock companies, usually introduced into acts of Parliament authorizing the execution of undertakings of a public nature by such companies, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That this act shall apply to every joint-stock company which shall by any act which shall hereafter be passed be incorporated for the purpose of carrying on any undertaking, and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the company which shall be incorporated by such act, and to the undertaking for carrying on which such company shall be incorporated, so far as the same shall be applicable thereto respectively; and such clauses and provisions, as well as the clauses and provisions of every other act which shall be incorporated with such act, shall, save as aforesaid, form part of such act, and be construed together therewith as forming one act.

Act to apply to all companies incorporated by acts hereafter to be passed.

II. And with respect to the construction of this act, and of other acts to be incorporated therewith, be it enacted as follows:—

Interpretations in this act:—

The expression " the special act " used in this act shall be construed to mean any act which shall be hereafter passed incorporating a

" the special act;"

joint-stock company for the purpose of carrying on any undertaking, and with which this act shall be so incorporated as aforesaid; and the word "prescribed," used in this act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act; and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special act" had been used; and the expression "the undertaking" shall mean the undertaking or works, of whatever nature, which shall by the special act be authorized to be executed.

"the undertaking."

Interpretations in this and the special act:—

III. The following words and expressions, both in this and the special act, shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction; (that is to say),

number; Words importing the singular number only shall include the plural number; and words importing the plural number only shall include the singular number.

gender; Words importing the masculine gender only shall include females:

"lands;" The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure.

"lease;" The word "lease" shall include an agreement for a lease.

"month;" The word "month" shall mean calendar month.

"superior courts;" The expression "superior courts" shall mean her Majesty's superior courts of record at Westminster or Dublin, as the case may require.

"oath;" The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath.

"county;" The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town.

"justice;" The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or other place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where any matter shall be authorized or required to be done by two

"two justices;" justices, the expression "two justices" shall be understood to mean two justices assembled and acting together in petty sessions.

"the company;" The expression "the company" shall mean the company constituted by the special act.

"directors;" The expression "the directors" shall mean the directors of the company, and shall include all persons having the direction of the undertaking, whether under the name of directors, managers, committee of management, or under any other name.

"shareholder;" The word "shareholder" shall mean shareholder, proprietor, or member of the company; and, in referring to any such shareholder, expressions properly applicable to a person shall be held to apply to a corporation: and

"secretary." The expression "the secretary" shall mean the secretary of the company, and shall include the word "clerk."

Short title of the act.

IV. And be it enacted, That, in citing this act in other acts of Parliament and in legal instruments, it shall be sufficient to use the expression "The Companies' Clauses Consolidation Act, 1845."

Form in which portions of this act may be incorporated with other acts.

V. And whereas it may be convenient in some cases to incorporate with acts of Parliament hereafter to be passed some portion only of the provisions of this act; be it therefore enacted, That, for the purpose of making any such incorporation, it shall be sufficient in any such act to enact that the clauses and provisions of this act, with respect to the matter so proposed to be incorporated, (describing such matter as it is described in this act in the words introductory to the enactment with respect to such matter), shall be incorporated with such act; and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

Distribution of Capital.

And, with respect to the distribution of the capital of the company into shares, be it enacted as follows:—

Capital to be divided into shares.

VI. The capital of the company shall be divided into shares of the prescribed number and amount; and such shares shall be numbered in arithmetical progression, beginning with number 1; and every such share shall be distinguished by its appropriate number.

Shares to be personal estate.

VII. All shares in the undertaking shall be personal estate, and transmissible as such, and shall not be of the nature of real estate.

Shareholders.

VIII. Every person who shall have subscribed the prescribed sum or upwards to the capital of the company, or shall otherwise have become entitled to a share in the company, and whose name shall have been entered on the register of shareholders hereinafter mentioned, shall be deemed a shareholder of the company.

Registry of shareholders.

IX. The company shall keep a book, to be called the "Register of Shareholders;" and in such book shall be fairly and distinctly entered, from time to time, the names of the several corporations, and the names and additions of the several persons entitled to shares in the company, together with the number of shares to which such shareholders shall be respectively entitled, distinguishing each share by its number, and the amount of the subscriptions paid on such shares, and the surnames or corporate names of the said shareholders, shall be placed in alphabetical order; and such book shall be authenticated by the common seal of the company being affixed thereto; and such authentication shall take place at the first ordinary meeting, or at the next subsequent meeting of the company, and so from time to time at each ordinary meeting of the company.

Addresses of shareholders.

X. In addition to the said register of shareholders, the company shall provide a book, to be called the "Shareholders' Address Book," in which the secretary shall from time to time enter in alphabetical order the corporate names and places of business of the several shareholders of the company, being corporations, and the surnames of the several other shareholders with their respective Christian names, places of abode, and descriptions, so far as the same shall be known to the company; and every shareholder, or if such shareholder be a corporation the clerk or agent of such corporation, may at all convenient times peruse such book *gratis*, and may require a copy thereof or of any part thereof; and for every hundred words so required to be copied, the company may demand a sum not exceeding sixpence.

Certificates of shares to be issued to the shareholders.

XI. On demand of the holder of any share, the company shall cause a certificate of the proprietorship of such share to be delivered to such

shareholder; and such certificate shall have the common seal of the company affixed thereto; and such certificate shall specify the share in the undertaking to which such shareholder is entitled; and the same may be according to the form in the Schedule (A.) to this act annexed, or to the like effect; and for such certificate the company may demand any sum not exceeding the prescribed amount, or, if no amount be prescribed, then a sum not exceeding two shillings and sixpence.

Certificate to be evidence.

XII. The said certificate shall be admitted in all courts as *prima facie* evidence of the title of such shareholder, his executors, administrators, successors, or assigns, to the share therein specified; nevertheless, the want of such certificate shall not prevent the holder of any share from disposing thereof.

Certificate to be renewed when destroyed.

XIII. If any such certificate be worn out or damaged, then, upon the same being produced at some meeting of the directors, such directors may order the same to be cancelled, and thereupon another similar certificate shall be given to the party in whom the property of such certificate, and of the share therein mentioned, shall be at the time vested; or, if such certificate be lost or destroyed, then, upon proof thereof to the satisfaction of the directors, a similar certificate shall be given to the party entitled to the certificate so lost or destroyed; and in either case a due entry of the substituted certificate shall be made by the secretary in the register of shareholders; and for every such certificate so given or exchanged the company may demand any sum not exceeding the prescribed amount, or, if no amount be prescribed, then a sum not exceeding two shillings and sixpence.

Transfer of Shares.

And with respect to the transfer or transmission of shares, be it enacted as follows:—

Transfer of shares to be by deed duly stamped.

XIV. Subject to the regulations herein or in the special act contained, every shareholder may sell and transfer all or any of his shares in the undertaking, or all or any part of his interest in the capital stock of the company, in case such shares shall, under the provision hereinafter contained, be consolidated into capital stock; and every such transfer shall be by deed duly stamped, in which the consideration shall be truly stated; and such deed may be according to the form in the Schedule (B.) to this act annexed, or to the like effect.

Transfers of shares to be registered, &c.

XV. The said deed of transfer (when duly executed) shall be delivered to the secretary, and be kept by him; and the secretary shall enter a memorial thereof in a book to be called the "Register of Transfers," and shall indorse such entry on the deed of transfer, and shall, on demand, deliver a new certificate to the purchaser; and for every such entry, together with such indorsement and certificate, the company may demand any sum not exceeding the prescribed amount, or, if no amount be prescribed, then a sum not exceeding two shillings and sixpence; and on the request of the purchaser of any share an indorsement of such transfer shall be made on the certificate of such share, instead of a new certificate being granted; and such indorsement, being signed by the secretary, shall be considered in every respect the same as a new certificate; and until such transfer has been so delivered to the secretary as aforesaid, the vendor of the share shall continue liable to the company for any calls that may be made upon such share, and the purchaser of the share shall not be

entitled to receive any share of the profits of the undertaking, or to vote in respect of such share.

XVI. No shareholder shall be entitled to transfer any share, after any call shall have been made in respect thereof, until he shall have paid such call, nor until he shall have paid all calls for the time being due on every share held by him.

Closing of transfer books.

XVII. It shall be lawful for the directors to close the register of transfers for the prescribed period, or, if no period be prescribed, then for a period not exceeding fourteen days previous to each ordinary meeting, and they may fix a day for the closing of the same, of which seven days' notice shall be given by advertisement in some newspaper as after mentioned; and any transfer made during the time when the transfer books are so closed shall, as between the company and the party claiming under the same, but not otherwise, be considered as made subsequently to such ordinary meeting.

Transmission of shares by other means than transfer to be authenticated by a declaration.

XVIII. If the interest in any share have become transmitted in consequence of the death or bankruptcy or insolvency of any shareholder, or in consequence of the marriage of a female shareholder, or by any other lawful means than by a transfer according to the provisions of this or the special act, such transmission shall be authenticated by a declaration in writing as hereinafter mentioned, or in such other manner as the directors shall require; and every such declaration shall state the manner in which and the party to whom such share shall have been so transmitted, and shall be made and signed by some credible person before a justice, or before a Master or Master extraordinary of the high Court of Chancery; and such declaration shall be left with the secretary, and thereupon he shall enter the name of the person entitled under such transmission in the register of shareholders; and for every such entry the company may demand any sum not exceeding the prescribed amount, and where no amount shall be prescribed then not exceeding five shillings; and until such transmission has been so authenticated, no person claiming by virtue of any such transmission shall be entitled to receive any share of the profits of the undertaking, nor to vote in respect of any such share as the holder thereof.

Proof of transmission by marriage, will, &c.

XIX. If such transmission be by virtue of the marriage of a female shareholder, the said declaration shall contain a copy of the register of such marriage, or other particulars of the celebration thereof, and shall declare the identity of the wife with the holder of such share; and if such transmission have taken place by virtue of any testamentary instrument, or by intestacy, the probate of the will or the letters of administration, or an official extract therefrom, shall, together with such declaration, be produced to the secretary; and upon such production in either of the cases aforesaid the secretary shall make an entry of the declaration in the said register of transfers.

Company not bound to regard trusts.

XX. The company shall not be bound to see to the execution of any trust, whether express, implied, or constructive, to which any of the said shares may be subject; and the receipt of the party in whose name any such share shall stand in the books of the company, or, if it stands in the names of more parties than one, the receipt of one of the parties named in the register of shareholders, shall from time to time be a sufficient discharge to the company for any dividend or other sum of money payable in respect of such share, notwithstanding any trusts to which such share may then be subject, and whether or

not the company have had notice of such trusts; and the company shall not be bound to see to the application of the money paid upon such receipt.

And with respect to the payment of subscriptions, and the means of enforcing the payment of calls, be it enacted as follows:—

Subscriptions to be paid when called for.

XXI. The several persons who have subscribed any money toward the undertaking, or their legal representatives, respectively, shall pay the sums respectively so subscribed, or such portions thereof as shall from time to time be called for by the company, at such times and places as shall be appointed by the company; and with respect to the provisions herein or in the special act contained for enforcing the payment of calls, the word "shareholder" shall extend to and include the legal personal representatives of such shareholder.

Power to make calls.

XXII. It shall be lawful for the company from time to time to make such calls of money upon the respective shareholders, in respect of the amount of capital respectively subscribed or owing by them, as they shall think fit, provided that twenty-one days notice at the least be given of each call, and that no call exceed the prescribed amount, if any, and that successive calls be not made at less than the prescribed interval, if any, and that the aggregate amount of calls made in any one year do not exceed the prescribed amount if any; and every shareholder shall be liable to pay the amount of the calls so made, in respect of the shares held by him, to the persons and at the times and places from time to time appointed by the company.

Interest to be paid on calls unpaid.

XXIII. If, before or on the day appointed for payment, any shareholder do not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate allowed by law from the day appointed for the payment thereof to the time of the actual payment.

Power to allow interest on payment of subscriptions before call.

XXIV. It shall he lawful for the company, if they think fit, to receive from any of the shareholders willing to advance the same all or any part of the monies due upon their respective shares beyond the sums actually called for; and upon the principal monies so paid in advance, or so much thereof as from time to time shall exceed the amount of the calls then made upon the shares in respect of which such advance shall be made, the company may pay interest at such rate, not exceeding the legal rate of interest for the time being, as the shareholder paying such sum in advance and the company shall agree upon.

Enforcement of calls by action.

XXV. If at the time appointed by the company for the payment of any call, any shareholder fail to pay the amount of such call, it shall be lawful for the company to sue such shareholder for the amount thereof in any court of law or equity having competent jurisdiction, and to recover the same, with lawful interest, from the day on which such call was payable.

Declaration in action for calls.

XXVI. In any action or suit to be brought by the company against any shareholder to recover any money due for any call, it shall not be necessary to set forth the special matter, but it shall be sufficient for the company to declare that the defendant is the holder of one share or more in the company, (stating the number of shares), and is indebted to the company in the sum of money to which the calls in arrear shall amount in respect of one call or more upon one share or

more, (stating the number and amount of each of such calls), whereby an action hath accrued to the company by virtue of this and the special act.

Matter to be proved in action for calls.

XXVII. On the trial or hearing of such action or suit it shall be sufficient to prove that the defendant at the time of making such call was a holder of one share or more in the undertaking, and that such call was in fact made, and such notice thereof given as is directed by this or the special act; and it shall not be necessary to prove the appointment of the directors who made such call, nor any other matter whatsoever; and thereupon the company shall be entitled to recover what shall be due upon such call, with interest thereon, unless it shall appear either that any such call exceeds the prescribed amount, or that due notice of such call was not given, or that the prescribed interval between two successive calls had not elapsed, or that calls amounting to more than the sum prescribed for the total amount of calls in one year had been made within that period.

Proof of proprietorship.

XXVIII. The production of the register of shareholders shall be *primâ facie* evidence of such defendant being a shareholder, and of the number and amount of his shares.

Nonpayment of Calls.

And with respect to the forfeiture of shares for nonpayment of calls, be it enacted as follows:—

Forfeiture of shares for nonpayment of calls.

XXIX. If any shareholder fail to pay any call payable by him, together with the interest, if any, that shall have accrued thereon, the directors, at any time after the expiration of two months from the day appointed for payment of such call, may declare the share in respect of which such call was payable forfeited, and that whether the company have sued for the amount of such call, or not.

Notice of forfeiture to be given before declaration thereof.

XXX. Before declaring any share forfeited, the directors shall cause notice of such intention to be left at or transmitted by the post to the usual or last place of abode of the person appearing by the register of shareholders to be the proprietor of such share; and if the holder of any such share be abroad, or if his usual or last place of abode be not known to the directors, by reason of its being imperfectly described in the Shareholders' Address Book, or otherwise, or if the interest in any such share shall be known by the directors to have become transmitted otherwise than by transfer, as hereinbefore mentioned, but a declaration of such transmission shall not have been registered as aforesaid, and so the address of the parties to whom the same may have been transmitted, or may for the time being belong, shall not be known to the directors, the directors shall give public notice of such intention in the London or Dublin Gazette, according as the company's principal place of business shall be situate in England or Ireland, and also in some newspaper, as after mentioned; and the several notices aforesaid shall be given twenty-one days at least before the directors shall make such declaration of forfeiture.

Forfeiture to be confirmed by a general meeting.

XXXI. The said declaration of forfeiture shall not take effect so as to authorize the sale or other disposition of any share until such declaration shall have been confirmed at some general meeting of the company, to be held after the expiration of two months at the least from the day on which such notice of intention to make such declaration of forfeiture shall have been given; and it shall be lawful for the company to confirm such forfeiture at any such meeting, and by an order

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at such meeting, or at any subsequent general meeting, to direct the share so forfeited to be sold or otherwise disposed of.

XXXII. After such confirmation as aforesaid, it shall be lawful for the directors to sell the forfeited share, either by public auction or private contract, and if there be more than one such forfeited share, then either separately or together, as to them shall seem fit; and any shareholder may purchase any forfeited share so sold.

Evidence as to forfeiture of shares.

XXXIII. A declaration in writing, by some credible person not interested in the matter, made before any justice, or before any Master or Master extraordinary of the high Court of Chancery, that the call in respect of a share was made, and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was declared and confirmed in manner hereinbefore required, shall be sufficient evidence of the facts therein stated; and such declaration, and the receipt of the treasurer of the company for the price of such share, shall constitute a good title to such share; and a certificate of proprietorship shall be delivered to such purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase; and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

No more shares to be sold than sufficient for payment of calls.

XXXIV. The company shall not sell or transfer more of the shares of any such defaulter than will be sufficient, as nearly as can be ascertained at the time of such sale, to pay the arrears then due from such defaulter on account of any calls, together with interest, and the expenses attending such sale and declaration of forfeiture; and if the money produced by the sale of any such forfeited shares be more than sufficient to pay all arrears of calls and interest thereon due at the time of such sale, and the expenses attending the declaration of forfeiture and sale thereof, the surplus shall, on demand, be paid to the defaulter.

On payment of calls before sale, the forfeited shares to revert.

XXXV. If payment of such arrears of calls and interest and expenses be made before any share so forfeited and vested in the company shall have been sold, such share shall revert to the party to whom the same belonged before such forfeiture, in such manner as if such calls had been duly paid.

Remedies against Shareholders.

And with respect to the remedies of creditors of the company against the shareholders, be it enacted as follows:—

Execution against shareholders to the extent of their shares in capital not paid up.

XXXVI. If any execution, either at law or in equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient whereon to levy such execution, then such execution may be issued against any of the shareholders to the extent of their shares respectively in the capital of the company not then paid up: Provided always, that no such execution shall issue against any shareholder except upon an order of the court in which the action, suit, or other proceeding shall have been brought or instituted, made upon motion in open court after sufficient notice in writing to the persons sought to be charged; and upon such motion such court may order execution to issue accordingly; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution, at all reasonable times, to inspect the register of shareholders without fee.

Reimbursement of such shareholders.

XXXVII. If by means of any such execution any shareholder shall

have paid any sum of money beyond the amount then due from him in respect of calls, he shall forthwith be reimbursed such additional sum by the directors out of the funds of the company.

And with respect to the borrowing of money by the company on mortgage or bond, be it enacted as follows:—

Power to borrow money.

XXXVIII. If the company be authorized by the special act to borrow money on mortgage or bond, it shall be lawful for them, subject to the restrictions contained in the special act, to borrow on mortgage or bond such sums of money as shall from time to time, by an order of a general meeting of the company, be authorized to be borrowed, not exceeding in the whole the sum prescribed by the special act, and for securing the repayment of the money so borrowed, with interest, to mortgage the undertaking, and the future calls on the shareholders, or to give bonds in manner hereinafter mentioned.

Power to reborrow.

XXXIX. If, after having borrowed any part of the money so authorized to be borrowed on mortgage or bond, the company pay off the same, it shall be lawful for them again to borrow the amount so paid off, and so from time to time; but such power of reborrowing shall not be exercised without the authority of a general meeting of the company, unless the money be so reborrowed in order to pay off any existing mortgage or bond.

Evidence of authority for borrowing.

XL. Where by the special act the company shall be restricted from borrowing any money on mortgage or bond until a definite portion of their capital shall be subscribed or paid up, or where by this or the special act the authority of a general meeting is required for such borrowing, the certificate of a justice that such definite portion of the capital has been subscribed or paid up, and a copy of the order of a general meeting of the company authorizing the borrowing of any money, certified by one of the directors or by the secretary to be a true copy, shall be sufficient evidence of the fact of the capital required to be subscribed or paid up having been so subscribed or paid up, and of the order for borrowing money having been made; and upon production to any justice of the books of the company, and of such other evidence as he shall think sufficient, such justice shall grant the certificate aforesaid.

Mortgages and bonds to be stamped.

XLI. Every mortgage and bond for securing money borrowed by the company shall be by deed under the common seal of the company, duly stamped, and wherein the consideration shall be truly stated; and every such mortgage deed or bond may be according to the form in the Schedule (C.) or (D.) to this act annexed, or to the like effect.

Rights of mortgagees.

XLII. The respective mortgagees shall be entitled one with another to their respective proportions of the tolls, sums, and premises comprised in such mortgages, and of the future calls payable by the shareholders, if comprised therein, according to the respective sums in such mortgages mentioned to be advanced by such mortgagees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of priority of the date of any such mortgage, or of the meeting at which the same was authorized.

Application of calls, notwithstanding mortgage.

XLIII. No such mortgage (although it should comprise future calls on the shareholders) shall, unless expressly so provided, preclude the company from receiving and applying to the purposes of the company any calls to be made by the company.

XLIV. The respective obligees in such bonds shall, proportionally according to the amount of the monies secured thereby, be entitled to be paid, out of the tolls or other property or effects of the company, the respective sums in such bonds mentioned and thereby intended to be secured, without any preference one above another by reason of priority of date of any such bond, or of the meeting at which the same was authorized, or otherwise howsoever.

Register of mortgages and bonds.

XLV. A register of mortgages and bonds shall be kept by the secretary, and within fourteen days after the date of any such mortgage or bond an entry or memorial, specifying the number and date of such mortgage or bond, and the sums secured thereby, and the names of the parties thereto, with their proper additions, shall be made in such register; and such register may be perused at all reasonable times by any of the shareholders, or by any mortgagee or bond creditor of the company, or by any person interested in any such mortgage or bond, without fee or reward.

Transfers of mortgages and bonds to be stamped.

XLVI. Any party entitled to any such mortgage or bond may from time to time transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated; and every such transfer may be according to the form in the Schedule (E.) to this act annexed, or to the like effect.

Transfers of mortgages and bonds to be registered.

XLVII. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the secretary, and thereupon the secretary shall cause an entry or memorial thereof to be made in the same manner as in the case of the original mortgage; and after such entry every such transfer shall entitle the transferee to the full benefit of the original mortgage or bond in all respects; and no party, having made such transfer, shall have power to make void, release, or discharge the mortgage or bond so transferred, or any money thereby secured; and for such entry the company may demand a sum not exceeding the prescribed sum, or, where no sum shall be prescribed, the sum of two shillings and sixpence; and until such entry the company shall not be in any manner responsible to the transferee in respect of such mortgage.

Payment of interest on monies borrowed.

XLVIII. The interest of the money borrowed upon any such mortgage or bond shall be paid at the periods appointed in such mortgage or bond, and, if no period be appointed, half-yearly, to the several parties entitled thereto, and in preference to any dividends payable to the shareholders of the company.

Transfers of interest to be stamped.

XLIX. The interest on any such mortgage or bond shall not be transferable, except by deed duly stamped.

Repayment of money borrowed, at a time fixed.

L. The company may, if they think proper, fix a period for the repayment of the principal money so borrowed, with the interest thereof, and in such case the company shall cause such period to be inserted in the mortgage deed or bond; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond; and if no other place of payment be inserted in such mortgage deed or bond, such principal and interest shall be payable at the principal office or place of business of the company.

Repayment of money borrowed, where no time fixed.

LI. If no time be fixed in the mortgage deed or bond for the repayment of the money so borrowed, the party entitled to the mortgage or bond may, at the expiration or at any time after the expiration

of twelve months from the date of such mortgage or bond, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months' previous notice for that purpose; and in the like case the company may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or bond creditor shall be delivered to the secretary or left at the principal office of the company, and if given by the company shall be given either personally to such mortgagee or bond creditor or left at his residence, or if such mortgagee or bond creditor be unknown to the directors, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the London or Dublin Gazette, according as the principal office of the company shall be in England or Ireland, and in some newspaper as after mentioned.

Interest to cease on expiration of notice to pay off mortgage or bond.

LII. If the company shall have given notice of their intention to pay off any such mortgage or bond at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable on such mortgage or bond, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the company shall fail to pay the principal and interest due at the expiration of such notice on such mortgage or bond.

Arrears of interest, when to be enforced by appointment of a receiver.

LIII. Where by the special act the mortgagees of the company shall be empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due on such mortgages, by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage has become payable, and, after demand thereof in writing, the same be not paid, the mortgagee may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts of law or equity, require the appointment of a receiver, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts of law or equity, may, if his debt amount to the prescribed sum alone, or, if his debt does not amount to the prescribed sum, he may, in conjunction with other mortgagees whose debts, being so in arrear, after demand as aforesaid, shall, together with his, amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided.

Arrears of principal and interest.

Appointment of receiver.

LIV. Every application for a receiver in the cases aforesaid shall be made to two justices, and on any such application it shall be lawful for such justices, by order in writing, after hearing the parties, to appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the tolls or sums aforesaid, be fully paid; and upon such appointment being made, all such tolls and sums of money as aforesaid shall be paid to and received by the person so to be appointed; and the money so to be received shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed;

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and after such interest and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease.

LV. At all seasonable times the books of account of the company shall be open to the inspection of the respective mortgagees and bond creditors thereof, with liberty to take extracts therefrom, without fee or reward.

And with respect to the conversion of the borrowed money into capital, be it enacted as follows:—

Power to convert loan into capital.

LVI. It shall be lawful for the company, if they think fit, unless it be otherwise provided by the special act, to raise the additional sum so authorized to be borrowed, or any part thereof, by creating new shares of the company, instead of borrowing the same, or having borrowed the same, to continue at interest only a part of such additional sum, and to raise part thereof by creating new shares; but no such augmentation of capital as aforesaid shall take place without the previous authority of a general meeting of the company.

LVII. The capital so to be raised by the creation of new shares shall be considered as part of the general capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on nonpayment of calls, or otherwise, as if it had been part of the original capital except as to the times of making calls for such additional capital, and the amount of such calls, which respectively it shall be lawful for the company from time to time to fix as they shall think fit.

If old shares at premium, new shares to be offered to the shareholders.

LVIII. If at the time of any such augmentation of capital taking place by the creation of new shares the then existing shares be at a premium, or of greater actual value than the nominal value thereof then, unless it be otherwise provided by the special act, the sum so to be raised shall be divided into shares of such amount as will conveniently allow the same to be apportioned among the then shareholders in proportion to the existing shares held by them respectively; and such new shares shall be offered to the then shareholders in the proportion aforesaid; and such offer shall be made by letter under the hand of the secretary given to or sent by post addressed to each shareholder according to his address in the Shareholders' Address Book, or left at his usual or last place of abode.

Shares to vest in the parties accepting; otherwise to be disposed of by the directors.

LIX. The said new shares shall vest in and belong to the shareholders who shall accept the same, and pay the value thereof to the company at the time and by the instalments which shall be fixed by the company; and if any shareholder fail for one month after such offer of new shares to accept the same, and pay the instalments called for in respect thereof, it shall be lawful for the company to dispose of such shares in such manner as they shall deem most for the advantage of the company.

If not at a premium, to be issued as company think fit.

LX. If at the time of such augmentation of capital taking place the existing shares be not at a premium, then such new shares may be of such amount, and may be issued in such manner and on such terms, as the company shall think fit.

Consolidation of Shares.

And with respect to the consolidation of the shares into stock, be it enacted as follows:—

Power to consolidate shares into stock.

LXI. It shall be lawful for the company from time to time, with the consent of three-fifths of the votes of the shareholders present in

by proxy at any general meeting of the company, when
for that purpose shall have been given, to convert or con-
or any part of the shares then existing in the capital of
ny, and in respect whereof the whole money subscribed
been paid up, into a general capital stock, to be divided
he shareholders according to their respective interests therein.

Proprietors of stock may transfer the same.

After such conversion or consolidation shall have taken
the provisions contained in this or the special act which
imply that the capital of the company shall be divided
s of any fixed amount, and distinguished by numbers,
so much of the capital as shall have been so converted or
d into stock, cease and be of no effect, and the several
such stock may thenceforth transfer their respective inter-
n, or any parts of such interests, in the same manner and
the same regulations and provisions as or according to
shares in the capital of the company might be transferred
provisions of this or the special act; and the company
an entry to be made in some book, to be kept for that
every such transfer; and for every such entry they may
y sum not exceeding the prescribed amount, or, if no
prescribed, a sum not exceeding two shillings and sixpence.

Register of stock

The company shall from time to time cause the names of
parties who may be interested in any such stock as afore-
he amount of the interest therein possessed by them respect-
entered in a book to be kept for the purpose, and to be
e Register of Holders of Consolidated Stock;" and such
be accessible at all seasonable times to the several holders
stock in the undertaking.

Proprietors of stock entitled to dividends.

The several holders of such stock shall be entitled to par-
the dividends and profits of the company, according to
t of their respective interests in such stock, and such
all, in proportion to the amount thereof, confer on the
reof respectively the same privileges and advantages, for
e of voting at meetings of the company, qualification for
f directors, and for other purposes, as would have been
y shares of equal amount in the capital of the company,
none of such privileges or advantages, except the par-
in the dividends and profits of the company, shall be
y any aliquot part of such amount of consolidated stock
ot, if existing in shares, have conferred such privileges or
respectively.

Application of Capital.

nd be it enacted, That all the money raised by the com-
her by subscriptions of the shareholders, or by loan or
shall be applied, firstly, in paying the costs and expenses
obtaining the special act, and all expenses incident
d, secondly, in carrying the purposes of the company into

General Meetings.

h respect to the general meetings of the company, and the
the right of voting by the shareholders, be it enacted as

Ordinary meetings to be held half-yearly.

The first general meeting of the shareholders of the com-
be held within the prescribed time, or, if no time be pre-
hin one month after the passing of the special act, and

the future general meetings shall be held at the prescribed period and, if no periods be prescribed, in the months of February an August in each year, or at such other stated periods as shall b appointed for that purpose by an order of a general meeting; an the meetings so appointed to be held as aforesaid shall be calle "ordinary meetings;" and all meetings, whether ordinary or e traordinary, shall be held in the prescribed place, if any, and, if no pla be prescribed, then at some place to be appointed by the directors.

Business at ordinary meetings.

LXVII. No matters, except such as are appointed by this or th special act to be done at an ordinary meeting, shall be transacted any such meeting, unless special notice of such matters have be given in the advertisement convening such meeting.

Extraordinary meetings.

LXVIII. Every general meeting of the shareholders, other tha an ordinary meeting, shall be called an "extraordinary meeting and such meetings may be convened by the directors at such tim as they think fit.

Business at extraordinary meetings.

LXIX. No extraordinary meeting shall enter upon any busine not set forth in the notice upon which it shall have been convened.

Extraordinary meetings may be required by shareholders.

LXX. It shall be lawful for the prescribed number of shar holders, holding in the aggregate shares to the prescribed amoun or, where the number of shareholders or amount of shares shall n be prescribed, it shall be lawful for twenty or more shareholde holding in the aggregate not less than one-tenth of the capital of th company, by writing under their hands, at any time to require th directors to call an extraordinary meeting of the company; and suc requisition shall fully express the object of the meeting required be called, and shall be left at the office of the company, or given at least three directors, or left at their last or usual places of abod and forthwith upon the receipt of such requisition the directo shall convene a meeting of the shareholders; and if for twenty-o days after such notice the directors fail to call such meeting, th prescribed number, or such other number as aforesaid, of shar holders, qualified as aforesaid, may call such meeting, by givi fourteen days' public notice thereof.

Notice of meetings.

LXXI. Fourteen days' public notice at the least of all meetin whether ordinary or extraordinary, shall be given by advertisemen which shall specify the place, the day, and the hour of meeting; a every notice of an extraordinary meeting, or of an ordinary meetin if any other business than the business hereby or by the special a appointed for ordinary meetings is to be done thereat, shall speci the purpose for which the meeting is called.

Quorum for a general meeting.

LXXII. In order to constitute a meeting, (whether ordinary or e traordinary), there shall be present, either personally or by proxy, th prescribed quorum, and, if no quorum be prescribed, then shareholde holding in the aggregate not less than one-twentieth of the capital the company, and being in number not less than one for every fi hundred pounds of such required proportion of capital, unless suc number would be more than twenty, in which case twenty shar holders holding not less than one-twentieth of the capital of the com pany, shall be the quorum; and if within one hour from the time ap pointed for such meeting the said quorum be not present, no busine shall be transacted at the meeting other than the declaring of dividend, in case that shall be one of the objects of the meeting, bu such meeting shall, except in the case of a meeting for the election o directors, hereinafter mentioned, be held to be adjourned *sine die*.

person or by proxy at any general meeting of the company, when due notice for that purpose shall have been given, to convert or consolidate all or any part of the shares then existing in the capital of the company, and in respect whereof the whole money subscribed shall have been paid up, into a general capital stock, to be divided amongst the shareholders according to their respective interests therein.

Proprietors of stock may transfer the same.

LXII. After such conversion or consolidation shall have taken place, all the provisions contained in this or the special act which require or imply that the capital of the company shall be divided into shares of any fixed amount, and distinguished by numbers, shall, as to so much of the capital as shall have been so converted or consolidated into stock, cease and be of no effect, and the several holders of such stock may thenceforth transfer their respective interests therein, or any parts of such interests, in the same manner and subject to the same regulations and provisions as or according to which any shares in the capital of the company might be transferred under the provisions of this or the special act; and the company shall cause an entry to be made in some book, to be kept for that purpose, of every such transfer; and for every such entry they may demand any sum not exceeding the prescribed amount, or, if no amount be prescribed, a sum not exceeding two shillings and sixpence.

Register of stock

LXIII. The company shall from time to time cause the names of the several parties who may be interested in any such stock as aforesaid, with the amount of the interest therein possessed by them respectively, to be entered in a book to be kept for the purpose, and to be called "The Register of Holders of Consolidated Stock;" and such book shall be accessible at all seasonable times to the several holders of shares or stock in the undertaking.

Proprietors of stock entitled to dividends.

LXIV. The several holders of such stock shall be entitled to participate in the dividends and profits of the company, according to the amount of their respective interests in such stock, and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages, for the purpose of voting at meetings of the company, qualification for the office of directors, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any aliquot part of such amount of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages respectively.

Application of Capital.

LXV. And be it enacted, That all the money raised by the company, whether by subscriptions of the shareholders, or by loan or otherwise, shall be applied, firstly, in paying the costs and expenses incurred in obtaining the special act, and all expenses incident thereto, and, secondly, in carrying the purposes of the company into execution.

General Meetings.

And with respect to the general meetings of the company, and the exercise of the right of voting by the shareholders, be it enacted as follows:—

Ordinary meetings to be held half-yearly.

LXVI. The first general meeting of the shareholders of the company shall be held within the prescribed time, or, if no time be prescribed, within one month after the passing of the special act, and

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proceeding has been carried, and an entry to that effect in the boo of proceedings of the company, shall be sufficient authority for suc proceeding without proof of the number or proportion of votes r corded in favour of or against the same.

Appointment and Rotation of Directors.

And with respect to the appointment and rotation of directors, be enacted as follows:—

Number of directors.

LXXXI. The number of directors shall be the prescribed numbe

Power to vary the number of directors.

LXXXII. Where the company shall be authorized by the speci act to increase or to reduce the number of the directors, it shall l lawful for the company, from time to time, in general meeting, aft due notice for that purpose, to increase or reduce the number of t directors within the prescribed limits, if any, and to determine t order of rotation in which such reduced or increased number shall out of office, and what number shall be a quorum at their meetings

Election of directors.

LXXXIII. The directors appointed by the special act shall, unle thereby otherwise provided, continue in office until the first ordi ary meeting to be held in the year next after that in which the speci act shall have passed; and at such meeting the shareholders prese personally or by proxy, may either continue in office the directo appointed by the special act, or any number of them, or may elect new body of directors, or directors to supply the places of those n continued in office, the directors appointed by the special act bei eligible as members of such new body; and at the first ordinary mee ing to be held every year thereafter the shareholders present, perso ally or by proxy, shall elect persons to supply the places of the direc ors then retiring from office, agreeably to the provisions hereinaft contained; and the several persons elected at any such meeting, bei neither removed nor disqualified, nor having resigned, shall contin to be directors until others are elected in their stead, as hereinaft mentioned.

Existing directors continued on failure of meeting for election of directors.

LXXXIV. If at any meeting at which an election of directo ought to take place the prescribed quorum shall not be present withi one hour from the time appointed for the meeting, no election of d rectors shall be made, but such meeting shall stand adjourned to th following day at the same time and place; and if at the meeting so ad journed the prescribed quorum be not present within one hour fro the time appointed for the meeting, the existing directors shall con tinue to act and retain their powers until new directors be appointe at the first ordinary meeting of the following year.

Qualification of directors.

LXXXV. No person shall be capable of being a director unless h be a shareholder, nor unless he be possessed of the prescribed numbe (if any) of shares; and no person holding an office or place of trust o profit under the company, or interested in any contract with the com pany, shall be capable of being a director; and no director shall b capable of accepting any other office or place of trust or profit unde the company, or of being interested in any contract with the com pany, during the time he shall be a director.

Cases in which office of director shall become vacant.

LXXXVI. If any of the directors at any time subsequently to hi election accept or continue to hold any other office or place of trust o profit under the company, or be either directly or indirectly concern ed in any contract with the company, or participate in any manne in the profits of any work to be done for the company, or if such di rector at any time cease to be a holder of the prescribed number o shares in the company, then in any of the cases aforesaid the office o

Chairman at general meetings.

LXXIII. At every meeting of the company one or other of the following persons shall preside as chairman; that is to say, the chairman of the directors, or in his absence the deputy chairman, (if any); or in the absence of the chairman and deputy chairman some one of the directors of the company to be chosen for that purpose by the meeting, or in the absence of the chairman and deputy chairman and of all the directors, any shareholder to be chosen for that purpose by a majority of the shareholders present at such meeting.

Business at meetings and adjournments.

LXXIV. The shareholders present at any such meeting shall proceed in the execution of the powers of the company with respect to the matters for which such meeting shall have been convened, and those only; and every such meeting may be adjourned from time to time, and from place to place; and no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which such adjournment took place.

Votes of shareholders.

LXXV. At all general meetings of the company every shareholder shall be entitled to vote according to the prescribed scale of voting, and where no scale shall be prescribed every shareholder shall have one vote for every share up to ten, and he shall have an additional vote for every five shares beyond the first ten shares held by him up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares: Provided always, that no shareholder shall be entitled to vote at any meeting unless he shall have paid all the calls then due upon the shares held by him.

Manner of voting.

LXXVI. The votes may be given either personally or by proxies, being shareholders, authorized by writing according to the form in the Schedule (F.) to this act annexed, or in a form to the like effect, under the hand of the shareholder nominating such proxy, or, if such shareholder be a corporation, then under their common seal; and every proposition at any such meeting shall be determined by the majority of votes of the parties present, including proxies, the chairman of the meeting being entitled to vote, not only as a principal and proxy, but to have a casting vote if there be an equality of votes.

Regulations as to proxies.

LXXVII. No person shall be entitled to vote as a proxy unless the instrument appointing such proxy have been transmitted to the secretary of the company the prescribed period, or, if no period be prescribed, not less than forty-eight hours before the time appointed for holding the meeting at which such proxy is to be used.

Votes of joint shareholders.

LXXVIII. If several persons be jointly entitled to a share, the person whose name stands first in the register of shareholders as one of the holders of such share shall, for the purpose of voting at any meeting, be deemed the sole proprietor thereof; and on all occasions the vote of such first-named shareholder, either in person or by proxy, shall be allowed as the vote in respect of such share, without proof of the concurrence of the other holders thereof.

Votes of lunatics and minors, &c.

LXXIX. If any shareholder be a lunatic or idiot, such lunatic or idiot may vote by his committee; and if any shareholder be a minor, he may vote by his guardian or any one of his guardians; and every such vote may be given either in person or by proxy.

Proof of a particular majority of votes only required in the event of a poll being demanded.

LXXX. Whenever in this or the special act the consent of any particular majority of votes at any meeting of the company is required in order to authorize any proceeding of the company, such particular majority shall only be required to be proved in the event of a poll being demanded at such meeting; and if such poll be not demanded, then a declaration by the chairman that the resolution authorizing such

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proceeding has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient authority for such proceeding without proof of the number or proportion of votes recorded in favour of or against the same.

Appointment and Rotation of Directors.

And with respect to the appointment and rotation of directors, be it enacted as follows:—

Number of directors.

LXXXI. The number of directors shall be the prescribed number.

Power to vary the number of directors.

LXXXII. Where the company shall be authorized by the special act to increase or to reduce the number of the directors, it shall be lawful for the company, from time to time, in general meeting, after due notice for that purpose, to increase or reduce the number of the directors within the prescribed limits, if any, and to determine the order of rotation in which such reduced or increased number shall go out of office, and what number shall be a quorum at their meetings.

Election of directors.

LXXXIII. The directors appointed by the special act shall, unless thereby otherwise provided, continue in office until the first ordinary meeting to be held in the year next after that in which the special act shall have passed; and at such meeting the shareholders present, personally or by proxy, may either continue in office the directors appointed by the special act, or any number of them, or may elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by the special act being eligible as members of such new body; and at the first ordinary meeting to be held every year thereafter the shareholders present, personally or by proxy, shall elect persons to supply the places of the directors then retiring from office, agreeably to the provisions hereinafter contained; and the several persons elected at any such meeting, being neither removed nor disqualified, nor having resigned, shall continue to be directors until others are elected in their stead, as hereinafter mentioned.

Existing directors continued on failure of meeting for election of directors.

LXXXIV. If at any meeting at which an election of directors ought to take place the prescribed quorum shall not be present within one hour from the time appointed for the meeting, no election of directors shall be made, but such meeting shall stand adjourned to the following day at the same time and place; and if at the meeting so adjourned the prescribed quorum be not present within one hour from the time appointed for the meeting, the existing directors shall continue to act and retain their powers until new directors be appointed at the first ordinary meeting of the following year.

Qualification of directors.

LXXXV. No person shall be capable of being a director unless he be a shareholder, nor unless he be possessed of the prescribed number (if any) of shares; and no person holding an office or place of trust or profit under the company, or interested in any contract with the company, shall be capable of being a director; and no director shall be capable of accepting any other office or place of trust or profit under the company, or of being interested in any contract with the company, during the time he shall be a director.

Cases in which office of director shall become vacant.

LXXXVI. If any of the directors at any time subsequently to his election accept or continue to hold any other office or place of trust or profit under the company, or be either directly or indirectly concerned in any contract with the company, or participate in any manner in the profits of any work to be done for the company, or if such director at any time cease to be a holder of the prescribed number of shares in the company, then in any of the cases aforesaid the office of

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such director shall become vacant, and thenceforth he shall cease from voting or acting as a director.

Shareholder of an incorporated joint-stock company not disqualified by reason of contracts.

LXXXVII. Provided always, that no person, being a shareholder or member of any incorporated joint-stock company, shall be disqualified or prevented from acting as a director by reason of any contract entered into between such joint-stock company and the company incorporated by the special act; but no such director, being a shareholder or member of such joint-stock company, shall vote on any question as to any contract with such joint-stock company.

Rotation of directors.

LXXXVIII. The directors appointed by the special act, and continued in office as aforesaid, or the directors elected to supply the places of those retiring as aforesaid, shall, subject to the provision hereinbefore contained for increasing or reducing the number of directors, retire from office at the times and in the proportions following, the individuals to retire being in each instance determined by ballot among the directors, unless they shall otherwise agree; (that is to say),

At the end of the first year after the first election of directors, the prescribed number, and, if no number be prescribed, one-third of such directors, to be determined by ballot among themselves, unless they shall otherwise agree, shall go out of office.

At the end of the second year the prescribed number, and, if no number be prescribed, one-half of the remaining number of such directors, to be determined in like manner, shall go out of office.

At the end of the third year the prescribed number, and, if no number be prescribed, the remainder of such directors, shall go out of office.

And in each instance the places of the retiring directors shall be supplied by an equal number of qualified shareholders; and at the first ordinary meeting in every subsequent year, the prescribed number, and, if no number be prescribed, one-third of the directors, being those who have been longest in office, shall go out of office, and their places shall be supplied in like manner; nevertheless, every director so retiring from office may be re-elected immediately or at any future time, and after such re-election shall, with reference to the going out by rotation, be considered as a new director: Provided always, that, if the prescribed number of directors be some number not divisible by three, and the number of directors to retire be not prescribed, the directors shall in each case determine what number of directors, as nearly one-third as may be, shall go out of office, so that the whole number shall go out of office in three years.

Supply of occasional vacancies in office of directors.

LXXXIX. If any director die, or resign, or become disqualified or incompetent to act as a director, or cease to be a director by any other cause than that of going out of office by rotation as aforesaid, the remaining directors, if they think proper so to do, may elect in his place some other shareholder, duly qualified, to be a director; and the shareholder so elected to fill up any such vacancy shall continue in office as a director so long only as the person in whose place he shall have been elected would have been entitled to continue if he had remained in office.

Powers of Directors.

And with respect to the powers of the directors, and the powers of the company to be exercised only in general meeting, be it enacted as follows:—

Powers of the

XC. The directors shall have the management and superintend-

proof of such respective meetings having been duly convened or held or of the persons making or entering such orders or proceedings being shareholders or directors or members of committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed until the contrary be proved.

Informalities in appointment of directors not to invalidate proceedings.

XCIX. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were or was disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Directors not to be personally liable.

C. No director, by being party to or executing in his capacity of director any contract or other instrument on behalf of the company or otherwise lawfully executing any of the powers given to the directors, shall be subject to be sued or prosecuted, either individually or collectively, by any person whomsoever; and the bodies or goods or lands of the directors shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into signed, or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as directors; and the directors, their heirs, executors, and administrators, shall be indemnified out of the capital of the company for all payments made or liability incurred in respect of any acts done by them, and for all losses, costs, and damages which they may incur in the execution of the powers granted to them; and the directors for the time being of the company may apply the existing funds and capital of the company for the purposes of such indemnity, and may, if necessary for that purpose, make calls of the capital remaining unpaid, (if any).

Indemnity of directors.

Auditors.

And with respect to the appointment and duties of auditors, be it enacted as follows:—

Election of auditors.

CI. Except where by the special act auditors shall be directed to be appointed otherwise than by the company, the company shall, at the first ordinary meeting after the passing of the special act, elect the prescribed number of auditors, and, if no number is prescribed, two auditors, in like manner as is provided for the election of directors; and at the first ordinary meeting of the company in each year thereafter the company shall in like manner elect an auditor to supply the place of the auditor then retiring from office, according to the provision hereinafter contained; and every auditor elected as hereinbefore provided, being neither removed nor disqualified, nor having resigned, shall continue to be an auditor until another be elected in his stead.

Qualification of auditors.

CII. Where no other qualification shall be prescribed by the special act, every auditor shall have at least one share in the undertaking; and he shall not hold any office in the company, nor be in any other manner interested in its concerns, except as a shareholder.

Rotation of auditors.

CIII. One of such auditors (to be determined in the first instance by ballot between themselves, unless they shall otherwise agree, and afterwards by seniority) shall go out of office at the first ordinary meeting in each year; but the auditor so going out shall be immediately re-eligible, and after any such re-election shall,

acts relating to the affairs of the company which the directors could lawfully do, and which they shall from time to time think proper to entrust to them.

Meetings of committees.

XCVI. The said committees may meet from time to time, and may adjourn from place to place, as they think proper, for carrying into effect the purposes of their appointment; and no such committee shall exercise the powers entrusted to them except at a meeting at which there shall be present the prescribed quorum, or, if no quorum be prescribed, then a quorum to be fixed for that purpose by the general body of directors; and at all meetings of the committees one of the members present shall be appointed chairman; and all questions at any meeting of the committee shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of the committee.

Contracts by committee or directors, how to be entered into.

XCVII. The power which may be granted to any such committee to make contracts, as well as the power of the directors to make contracts on behalf of the company, may lawfully be exercised as follows; (that is to say),

With respect to any contract which, if made between private persons, would be by law required to be in writing, and under seal, such committee or the directors may make such contract on behalf of the company in writing, and under the common seal of the company, and in the same manner may vary or discharge the same.

With respect to any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, then such committee or the directors may make such contract on behalf of the company in writing, signed by such committee or any two of them, or any two of the directors, and in the same manner may vary or discharge the same.

With respect to any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only, without writing, and in the same manner may vary or discharge the same.

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be; and on any default in the execution of any such contract, either by the company or any other party thereto, such actions or suits may be brought, either by or against the company, as might be brought had the same contracts been made between private persons only.

Proceedings to be entered in a book, and to be evidence.

XCVIII. The directors shall cause notes, minutes, or copies, as the case may require, of all appointments made or contracts entered into by the directors, and of the orders and proceedings of all meetings of the company, and of the directors and committees of directors, to be duly entered in books, to be from time to time provided for the purpose, which shall be kept under the superintendence of the directors; and every such entry shall be signed by the chairman of such meeting; and such entry, so signed, shall be received as evidence in all courts, and before all judges, justices, and others, without

proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being shareholders or directors or members of committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed until the contrary be proved.

Informalities in appointment of directors not to invalidate proceedings.

XCIX. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were or was disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Directors not to be personally liable.

C. No director, by being party to or executing in his capacity of director any contract or other instrument on behalf of the company, or otherwise lawfully executing any of the powers given to the directors, shall be subject to be sued or prosecuted, either individually or collectively, by any person whomsoever; and the bodies or goods or lands of the directors shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, signed, or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as directors; and the directors, their heirs, executors, and administrators, shall be indemnified out of the capital of the company for all payments made or liability incurred in respect of any acts done by them, and for all losses, costs, and damages which they may incur in the execution of the powers granted to them; and the directors for the time being of the company may apply the existing funds and capital of the company for the purposes of such indemnity, and may, if necessary for that purpose, make calls of the capital remaining unpaid, (if any).

Indemnity of directors.

Auditors.

And with respect to the appointment and duties of auditors, be it enacted as follows:—

Election of auditors.

CI. Except where by the special act auditors shall be directed to be appointed otherwise than by the company, the company shall, at the first ordinary meeting after the passing of the special act, elect the prescribed number of auditors, and, if no number is prescribed, two auditors, in like manner as is provided for the election of directors; and at the first ordinary meeting of the company in each year thereafter the company shall in like manner elect an auditor to supply the place of the auditor then retiring from office, according to the provision hereinafter contained; and every auditor elected as hereinbefore provided, being neither removed nor disqualified, nor having resigned, shall continue to be an auditor until another be elected in his stead.

Qualification of auditors.

CII. Where no other qualification shall be prescribed by the special act, every auditor shall have at least one share in the undertaking; and he shall not hold any office in the company, nor be in any other manner interested in its concerns, except as a shareholder.

Rotation of auditors.

CIII. One of such auditors (to be determined in the first instance by ballot between themselves, unless they shall otherwise agree, and afterwards by seniority) shall go out of office at the first ordinary meeting in each year; but the auditor so going out shall be immediately re-eligible, and after any such re-election shall,

with respect to the going out of office by rotation, be deemed a new auditor.

CIV. If any vacancy take place among the auditors in the course of the current year, then at any general meeting of the company the vacancy may, if the company think fit, be supplied by election of the shareholders.

Failure of meeting to elect auditor.

CV. The provision of this act respecting the failure of an ordinary meeting at which directors ought to be chosen shall apply, *mutatis mutandis*, to any ordinary meeting at which an auditor ought to be appointed.

Delivery of balance sheet, &c. by directors to auditors.

CVI. The directors shall deliver to such auditors the half-yearly or other periodical accounts and balance sheet, fourteen days at the least before the ensuing ordinary meeting at which the same are required to be produced to the shareholders, as hereinafter provided.

Duty of auditors.

CVII. It shall be the duty of such auditors to receive from the directors the half-yearly or other periodical accounts and balance sheet required to be presented to the shareholders, and to examine the same.

Powers of auditors.

CVIII. It shall be lawful for the auditors to employ such accountants and other persons as they may think proper, at the expense of the company, and they shall either make a special report on the said accounts, or simply confirm the same; and such report or confirmation shall be read, together with the report of the directors, at the ordinary meeting.

Accountability of Officers.

And with respect to the accountability of the officers of the company, be it enacted as follows:—

Security to be taken from officers entrusted with money.

CIX. Before any person entrusted with the custody or control of monies, whether treasurer, collector, or other officer of the company, shall enter upon his office, the directors shall take sufficient security from him for the faithful execution of his office.

Officers to account, on demand.

CX. Every officer employed by the company shall from time to time, when required by the directors, make out and deliver to them, or to any person appointed by them for that purpose, a true and perfect account in writing, under his hand, of all monies received by him on behalf of the company; and such account shall state how, and to whom, and for what purpose, such monies shall have been disposed of; and, together with such account, such officer shall deliver the vouchers and receipts for such payments; and every such officer shall pay to the directors, or to any person appointed by them to receive the same, all monies which shall appear to be owing from him upon the balance of such accounts.

Summary remedy against parties failing to account.

CXI. If any such officer fail to render such account, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof when thereunto required, or if, for three days after being thereunto required, he fail to deliver up to the directors, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters, and things in his possession or power, relating to the execution of this or the special act, or any act incorporated therewith, or belonging to the company, then, on complaint thereof being made to a justice, such justice shall summon such officer to appear before two or more justices, at a time and place to be set forth in such summons, to answer such charge; and upon the appearance of such officer, or, in his ab-

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Bye-laws.

Power to make bye-laws for the officers of the company.

CXXIII. No dividend shall be paid in respect of any share unt all calls then due in respect of that and every other share held b the person to whom such dividend may be payable shall have bee paid.

And with respect to the making of bye-laws, be it enacted a follows:—

CXXIV. It shall be lawful for the company from time to time t make such bye-laws as they think fit, for the purpose of regulatin the conduct of the officers and servants of the company, and for pr viding for the due management of the affairs of the company in a respects whatsoever, and from time to time to alter or repeal any suc bye-laws, and make others, provided such bye-laws be not repugna to the laws of that part of the United Kingdom where the same a to have effect, or to the provisions of this or the special act; and suc bye-laws shall be reduced into writing, and shall have affixed there the common seal of the company; and a copy of such bye-laws sha be given to every officer and servant of the company affected thereb

Fines for breach of such bye-laws.

CXXV. It shall be lawful for the company, by such bye-laws, t impose such reasonable penalties upon all persons, being officers o servants of the company, offending against such bye-laws, as the com pany think fit, not exceeding five pounds for any one offence.

Bye-laws to be so framed as that penalties may be mitigated.

CXXVI. All the bye-laws to be made by the company shall be s framed as to allow the justice before whom any penalty impose thereby may be sought to be recovered, to order a part only of suc penalty to be paid, if such justice shall think fit.

Evidence of bye-laws.

CXXVII. The production of a written or printed copy of the bye laws of the company, having the common seal of the company affixe thereto, shall be sufficient evidence of such bye-laws, in all cases o prosecution under the same.

Arbitration.

And with respect to the settlement of disputes by arbitration, be it enacted as follows:—

Where questions are to be determined by arbitration, arbitrators to be appointed within fourteen days after notice.

CXXVIII. When any dispute authorized or directed by this or the special act, or any act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall, by writing under his hand, nominate and appoint an arbitrator, to whom such dispute shall be referred; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if, for the space of fourteen days after any such dispute shall have arisen and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then, upon such failure, the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

Vacancy of arbitrator to be supplied.

CXXIX. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable, or refuse, or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some

every description belonging to the company, and the debts due by the company at the date of making such balance sheet, and a distinct view of the profit or loss which shall have arisen on the transactions of the company in the course of the preceding half-year; and, previously to each ordinary meeting, such balance sheet shall be examined by the directors, or any three of their number, and shall be signed by the chairman or deputy chairman of the directors.

Inspection of accounts by shareholders at stated times.

CXVII. The books so balanced, together with such balance sheet as aforesaid, shall, for the prescribed periods, and, if no periods be prescribed, for fourteen days previous to each ordinary meeting, and for one month thereafter, be open for the inspection of the shareholders at the principal office or place of business of the company; but the shareholders shall not be entitled at any time, except during the periods aforesaid, to demand the inspection of such books, unless in virtue of a written order, signed by three of the directors.

Balance sheet to be produced at the meeting.

CXVIII. The directors shall produce to the shareholders assembled at such ordinary meeting the said balance sheet, applicable to the period immediately preceding such meeting, together with the report of the auditors thereon, as hereinbefore provided.

Book-keeper to allow inspection of the accounts at the appointed times.

CXIX. The directors shall appoint a book-keeper to enter the accounts aforesaid in books to be provided for the purpose; and every such book-keeper shall permit any shareholder to inspect such books, and to take copies or extracts therefrom, at any reasonable time during the prescribed periods, and, if no periods be prescribed, during one fortnight before and one month after every ordinary meeting; and, if he fail to permit any such shareholder to inspect such books, or take extracts or copies therefrom, during the periods aforesaid, he shall forfeit to such shareholder, for every such offence, a sum not exceeding five pounds.

Dividends.

And with respect to the making of dividends, be it enacted as follows:—

Previously to declaration of dividends, a scheme to be prepared.

CXX. Previously to every ordinary meeting at which a dividend is intended to be declared, the directors shall cause a scheme to be prepared, shewing the profits (if any) of the company for the period current since the preceding ordinary meeting at which a dividend was declared, and apportioning the same, or so much thereof as they may consider applicable to the purposes of dividend, among the shareholders, according to the shares held by them respectively, the amount paid thereon, and the periods during which the same may have been paid, and shall exhibit such scheme at such ordinary meeting, and at such meeting a dividend may be declared according to such scheme.

Dividend not to be made so as to reduce capital.

CXXI. The company shall not make any dividend whereby their capital stock will be in any degree reduced: Provided always, that the word "dividend" shall not be construed to apply to a return of any portion of the capital stock, with the consent of all the mortgagees and bond creditors of the company, due notice being given for that purpose at an extraordinary meeting to be convened for that object.

Power to directors to set apart a fund for contingencies.

CXXII. Before apportioning the profits to be divided among the shareholders, the directors may, if they think fit, set aside thereout such sum as they may think proper to meet contingencies, or for enlarging, repairing, or improving the works connected with the undertaking, or any part thereof, and may divide the balance only among the shareholders.

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CXXIII. No dividend shall be paid in respect of any share until all calls then due in respect of that and every other share held by the person to whom such dividend may be payable shall have been paid.

Bye-laws.

And with respect to the making of bye-laws, be it enacted as follows:—

Power to make bye-laws for the officers of the company.

CXXIV. It shall be lawful for the company from time to time to make such bye-laws as they think fit, for the purpose of regulating the conduct of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatsoever, and from time to time to alter or repeal any such bye-laws, and make others, provided such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special act; and such bye-laws shall be reduced into writing, and shall have affixed thereto the common seal of the company; and a copy of such bye-laws shall be given to every officer and servant of the company affected thereby.

Fines for breach of such bye-laws.

CXXV. It shall be lawful for the company, by such bye-laws, to impose such reasonable penalties upon all persons, being officers or servants of the company, offending against such bye-laws, as the company think fit, not exceeding five pounds for any one offence.

Bye-laws to be so framed as that penalties may be mitigated.

CXXVI. All the bye-laws to be made by the company shall be so framed as to allow the justice before whom any penalty imposed thereby may be sought to be recovered, to order a part only of such penalty to be paid, if such justice shall think fit.

Evidence of bye-laws.

CXXVII. The production of a written or printed copy of the bye-laws of the company, having the common seal of the company affixed thereto, shall be sufficient evidence of such bye-laws, in all cases of prosecution under the same.

Arbitration.

And with respect to the settlement of disputes by arbitration, be it enacted as follows:—

Where questions are to be determined by arbitration, arbitrators to be appointed within fourteen days after notice.

CXXVIII. When any dispute authorized or directed by this or the special act, or any act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall, by writing under his hand, nominate and appoint an arbitrator, to whom such dispute shall be referred; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if, for the space of fourteen days after any such dispute shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then, upon such failure, the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

Vacancy of arbitrator to be supplied.

CXXIX. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable, or refuse, or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some

other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed *ex parte;* and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

Appointment of umpire.

CXXX. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ; and if such umpire shall die, or refuse or for seven days neglect to act, they shall forthwith after such death, refusal, or neglect appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Board of Trade empowered to appoint an umpire, on neglect of the arbitrators, in cases of railway companies.

CXXXI. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for the Board of Trade, if they think fit, in any case in which a railway company shall be one party to the arbitration, on the application of either party to such arbitration, to appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ shall be final.

Power of arbitrators to call for books, &c.

CXXXII. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Costs to be in the discretion of the arbitrators.

CXXXIII. Except where by this or the special act, or any act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpires, as the case may be.

Submission to arbitration to be made rule of court.

CXXXIV. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

Notices.

And with respect to the giving of notices, be it enacted as follows:—

Service of notices upon company.

CXXXV. Any summons or notice, or any writ, or other proceeding at law or in equity, requiring to be served upon the company, may be served by the same being left at, or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or, in case there be no secretary, then by being given to any one director of the company.

Service by company on shareholders.

CXXXVI. Notices requiring to be served by the company upon the shareholders may, unless expressly required to be served personally, be served by the same being transmitted through the post, directed according to the registered address or other known address of the shareholder, within such period as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the giving of such notice; and in proving such service it shall be sufficient to prove that such notice was properly directed, and that it was so put into the post-office.

Notices to joint proprietors of shares.

CXXXVII. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled,

exhibited before them, and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

Penalties may be levied by distress.

CXLVIII. If forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress; and such justices, or either of them, shall issue their or his warrant of distress accordingly.

Imprisonment in default of distress.

CXLIX. It shall be lawful for any such justice to order any offender so convicted as aforesaid to be detained and kept in safe custody until return can be conveniently made to the warrant of distress to be issued for levying such penalty or forfeiture, and costs, unless the offender give sufficient security, by way of recognizance or otherwise, to the satisfaction of the justice, for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if before issuing such warrant of distress it shall appear to the justice, by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such justice whereon to levy such penalty or forfeiture, and costs, he may, if he thinks fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the justice, then such justice shall, by warrant, cause such offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture, and costs, be sooner paid and satisfied.

Distress how to be levied.

CL. Where in this or the special act, or any act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress not unlawful for want of form.

CLI. No distress levied by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Application of penalties.

CLII. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, for the benefit of the poor of such parish; or, if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied for the benefit of the

poor of such extra-parochial place, or of any adjoining parish or district, and shall order the same to be paid over to the proper officer for that purpose.

CLIII. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Penalties to be sued for within six months.

CLIV. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special act, or any act incorporated therewith, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage, as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

Damage to be made good in addition to penalty.

CLV. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special act, or any act incorporated therewith, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Penalty on witnesses making default.

CLVI. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special act, or any act incorporated therewith, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient dispatch, before some justice, without any warrant or other authority than this or the special act; and such justice shall proceed with all convenient dispatch to the hearing and determining of the complaint against such offender.

Transient offenders.

CLVII. The justices before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule (G.) to this act annexed.

Form of conviction.

CLVIII. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

Proceedings not to be quashed for want of form.

Appeal.

CLIX. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made

Parties allowed to appeal to quarter sessions on giving security.

within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

Court to make such order as they think reasonable.

CLX. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Access to Special Act.

And with respect to the provision to be made for affording access to the special act by all parties interested, be it enacted as follows:

Copies of special act to be kept and deposited, and allowed to be inspected.

CLXI. The company shall, at all times after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act, printed by the printers to her Majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also, within the space of such six months, deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend, and in the office of the town clerk of every burgh or city into which or within one mile of which the works shall extend, a copy of such special act so printed as aforesaid; and the said clerks of the peace and town clerks shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms and under the like penalty for default as is provided in the case of certain plans and sections, by an act passed in the first year of the reign of her present Majesty, intituled "An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

7 Will. 4 & 1 Vict. c. 83.

Penalty on company failing to keep or deposit such copies.

CLXII. If the company shall fail to keep or deposit as hereinbefore mentioned any of the said copies of the special act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Act not to extend to Scotland.

CLXIII. And be it enacted, That this act shall not extend to Scotland.

For recovering calls against shareholders residing in Scotland.

CLXIV. Provided always, and be it enacted, That if any shareholder residing in Scotland shall fail to pay the amount of any call made upon him by the company in respect of any share held by him, it shall be lawful for the company to proceed against him in Scotland, and to sue for and recover the amount of such call, or to declare such share forfeited, in such manner as is by "The Com-

panies' Clauses Consolidation (Scotland) Act, 1845," in case the same shall pass into a law, provided in regard to shareholders of any company in Scotland.

APPEND STATUTES. *The Companies' Clauses Consolidation Act.*

CLXV. And be it enacted, That this act may be amended or repealed by any act to be passed in this session of Parliament.

SCHEDULES REFERRED TO BY THE FOREGOING ACT.

SCHEDULE (A.)

Form of Certificate of Share.

"The Company."

Number

This is to certify that *A. B.* of , is the proprietor of the share number of "The Company," subject to the regulations of the said company. Given under the common seal of the said company, the day of , in the year of our Lord .

SCHEDULE (B.)

Form of Transfer of Shares or Stock.

I , of , in consideration of the sum of , paid to me by , of , do hereby transfer to the said , share [*or*, "shares"], numbered in the undertaking called "The Company," [*or*, " pounds Consolidated Stock in the undertaking called "The Company," standing, [*or*, "part of the stock standing'] in my name in the books of the company "], to hold unto the said , his executors, administrators, and assigns [*or*, "successors and assigns"], subject to the several conditions on which I held the same at the time of the execution hereof; and I the said do hereby agree to take the said share [*or*, "shares," *or*, "stock "], subject to the same conditions. As witness our hands and seals, the day of .

SCHEDULE (C.)

Form of Mortgage Deed.

"The Company."

Mortgage, number £ .

By virtue of [*here name the special act*], we, "The Company" in consideration of the sum of pounds paid to us by *A. B.*, of , do assign unto the said *A. B.*, his executors, administrators, and assigns, the said undertaking, ["and" (*in case such loan shall be in anticipation of the capital authorized to be raised*) "all future calls on shareholders"], and all the tolls and sums of money arising by virtue of the said act, and all the

estate, right, title, and interest of the company in the same; to hold unto the said *A. B.*, his executors, administrators, and assigns, until the said sum of pounds, together with interest for the same at the rate of for every one hundred pounds by the year, be satisfied ["the principal sum to be repaid at the end of years from the date hereof," *in case any period be agreed upon for that purpose*, "at ," *or any place of payment other than the principal office of the company*]. Given under our common seal, this day of , in the year of our Lord .

SCHEDULE (D.)

Form of Bond.

"The Company."

Bond, number £ .

By virtue of [*here name the special act*], we, "The Company," in consideration of the sum of pounds to us in hand paid by *A. B.*, of , do bind ourselves and our successors unto the said *A. B.*, his executors, administrators, and assigns, in the penal sum of pounds.

The condition of the above obligation is such, that if the said company shall pay to the said *A. B.*, his executors, administrators, or assigns, ["at ," *in case any other place of payment than the principal office of the company be intended*], on the day of , which will be in the year one thousand eight hundred and , the principal sum of pounds, together with interest for the same at the rate of pounds per centum per annum, payable half-yearly, on the day of and day of , then the above-written obligation is to become void, otherwise to remain in full force. Given under our common seal, this day of , one thousand eight hundred and .

SCHEDULE (E.)

Form of Transfer of Mortgage or Bond.

I, *A. B.*, of , in consideration of the sum of , paid to me by *G. H.*, of , do hereby transfer to the said *G. H.*, his executors, administrators, and assigns, a certain bond [*or*, "mortgage"] number , made by "The Company" to , bearing date the day of , for securing the sum of and interest [*or, if such transfer be by indorsement*, "the within security"], and all my right, estate, and interest in and to the money thereby secured [*and, if the transfer be of a mortgage*, "and in and to the tolls, money, and property thereby assigned"]. In witness whereof I have hereunto set my hand and seal, this day of , one thousand eight hundred and .

SCHEDULE (F.)

Form of Proxy.

A. B. , one of the proprietors of "The Company," doth hereby appoint *C. D.*, of , to be the proxy of the said *A. B.*, in his absence to vote in his name upon any matter relating to the undertaking proposed at the meeting of the proprietors of the said company, to be held on the day of next, in such manner as he the said *C. D.* doth think proper. In witness whereof the said *A. B.* hath hereunto set his hand [*or, if a corporation, say*, "the common seal of the corporation"], the day of . one thousand eight hundred and .

SCHEDULE (G.)

Form of Conviction.

to wit.

Be it remembered, that on the day of , in the year of our Lord , *A. B.* is convicted before us, *C.*, *D.*, two of her Majesty's justices of the peace for the county of [*here describe the offence generally, and the time and place when and where committed*], contrary to the [*here name the special act*]. Given under our hands and seals, the day and year first above written.

C.
D.

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8 VICT. CAP. 18.

An Act for consolidating in One Act certain Provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a public Nature. [*8th May*, 1845.]

The Lands' Clauses Consolidation Act.

Whereas it is expedient to comprise in one general act sundry provisions usually introduced into acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: may it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That this act shall apply to every undertaking authorized by any act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act which shall be incorporated with such act, form part of such act, and be construed, together therewith, as forming one act.

Act to apply to all undertakings authorized by acts hereafter to be passed.

And with respect to the construction of this act and of acts to be incorporated therewith, be it enacted as follows:

Interpretations in this act:

II. The expression "the special act," used in this act, shall be construed to mean any act which shall be hereafter passed which shall authorize the taking of lands for the undertaking to which the same relates, and with which this act shall be so incorporated as aforesaid; and the word "prescribed," used in this act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special act" had been used; and the expression "the works," or "the undertaking" shall mean the works or undertaking, of whatever nature, which shall by the special act be authorized to be executed; and the expression "the pro-

"special act;"

"prescribed;"

"the works;"

"promoters of the undertaking."

moters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special act empowered to execute such works or undertaking.

Interpretations in this and the special act:

III. The following words and expressions, both in this and the special act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say),

number: Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number:

gender: Words importing the masculine gender only shall include females:

"lands:" The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure:

"lease:" The word "lease" shall include an agreement for a lease:

"month:" The word "month" shall mean calendar month:

"superior courts:" The expression "superior courts" shall mean her Majesty's superior courts of record at *Westminster* or *Dublin*, as the case may require:

"oath:" The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

"county:" The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town:

"the sheriff:" The word "sheriff" shall include under-sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque-port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque-port or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque-port, or place where any part of such lands shall be situate:

"the clerk of the peace:"

"justices:" The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque-port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque-port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque-port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression

"two justices:" "two justices" shall be understood to mean two justices assembled and acting together:

"owner:" Where under the provisions of this or the special act, or any act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorized

or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special act, would be enabled to sell and convey lands to the promoters of the undertaking:

"the Bank." The expression "the Bank" shall mean the Bank of England where the same shall relate to monies to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland where the same shall relate to monies to be paid or deposited in respect of lands situate in Ireland.

Short title of the act. IV. And be it enacted, That in citing this act in other acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Lands' Clauses Consolidation Act, 1845."

Form in which portions of this act may be incorporated with other acts. V. And whereas it may be convenient in some cases to incorporate with acts of Parliament hereafter to be passed some portion only of the provisions of this act; be it therefore enacted, That, for the purpose of making any such incorporation, it shall be sufficient in any such act to enact that the clauses of this act with respect to the matter so proposed to be incorporated, (describing such matter as it is described in this act in the words introductory to the enactment with respect to such matter), shall be incorporated with such act, and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

Purchase of Lands by Agreement.

And with respect to the purchase of lands by agreement, be it enacted as follows:

Power to purchase lands by agreement VI. Subject to the provisions of this and the special act, it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special act authorized to be taken, and which shall be required for the purposes of such act, and with all parties having any estate or interests in such lands, or by this or the special act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

Parties under disability enabled to sell and convey. VII. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say), all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for

lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of this or the special act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestuique trusts, whether infants, issue unborn, lunatics, femes covert, or other persons, and that to the same extent as such cestuique trusts respectively could have exercised the same powers under the authority of this and the special act if they had respectively been under no disability.

Parties under disability to exercise other powers.

VIII. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special act, or any act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

Amount of compensation in case of parties under disability to be ascertained by valuation, and paid into the Bank.

IX. The purchase-money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall, upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase-money or compensation shall be deposited in the Bank for the benefit of the parties interested, in manner hereinafter mentioned.

Where vendor absolutely entitled, lands may be sold on chief rents.

X. It shall be lawful for any person seised in fee of, or entitled to dispose of absolutely for his own benefit any lands authorized to be purchased for the purposes of the special act to sell and convey such lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rent-charge payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum.

XI. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

Payment of rents to be charged on tolls.

XII. In case the promoters of the undertaking shall be empowered by the special act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorized to be purchased for extraordinary purposes.

Power to purchase lands required for additional accommodation.

XIII. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking, for the purposes aforesaid, shall not exceed the prescribed quantity.

Authority to sell and repurchase such lands.

XIV. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Restraint on purchase from incapacitated persons.

XV. Nothing in this or the special act contained shall enable any municipal corporation to sell for the purposes of the special act, without the approbation of the Commissioners of her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special act, other than such lands as the company are by the powers of this or the special act empowered to purchase or take compulsorily.

Municipal corporations not to sell without the approbation of the Treasury.

Purchase of Lands otherwise than by Agreement.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows:

Capital to be subscribed before compulsory powers of purchase put in force.

XVI. Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the

moters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special act empowered to execute such works or undertaking.

Interpretations in this and the special act:

III. The following words and expressions, both in this and the special act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say),

number: Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number:

gender: Words importing the masculine gender only shall include females:

"lands:" The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure:

"lease:" The word "lease" shall include an agreement for a lease:

"month:" The word "month" shall mean calendar month:

"superior courts:" The expression "superior courts" shall mean her Majesty's superior courts of record at *Westminster* or *Dublin*, as the case may require:

"oath:" The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

"county:" The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town:

"the sheriff:" The word "sheriff" shall include under-sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque-port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque-port or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque-port, or place where any part of such lands shall be situate:

"the clerk of the peace:"

"justices:" The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque-port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque-port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque-port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together:

"two justices:"

"owner:" Where under the provisions of this or the special act, or any act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorized

case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices.

XXIII. If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

Compensation exceeding 50*l.* to be settled by arbitration or jury, at the option of the party claiming compensation.

XXIV. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special act; or any act incorporated therewith, authorized to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

Method of proceeding for settling disputes as to compensation by justices.

XXV. When any question of disputed compensation by this or the special act, or any act incorporated therewith, authorized or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any two of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate, under the common seal of such corporation; and such appointment shall be delivered to the arbitrator and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if, for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in

Appointment of arbitrator when questions are to be determined by arbitration.

Cases.

Wyld v. Hopkins.

the scheme. If afterwards the provisional committee-man does act, he is responsible for his acts.

But there are other cases in which the question does not assume so simple a form; and where there is evidence that the defendant has not only consented to be a provisional committee-man, but has authorised his name to be inserted in a prospectus, not generally, but a particular prospectus, in which, in some cases, certain persons are described as the *acting* committee, in others, solicitors are named, or engineers, or a secretary.

If such a prospectus has been so publicly circulated, with the defendant's consent, that the jury would presume the plaintiff knew of it, or if the plaintiff has had it shewn to him, at or before the time of making the contract, and has in either case acted upon it in making the contract, the question is, what inference ought a reasonable man to draw from the contents of that paper? This must of course depend upon the terms of each particular prospectus.

If the prospectus state merely the names of the provisional committee and nothing more, and no light can be derived from the context, that circumstance does not alter the liability of the defendant. If not responsible as being one of that committee in fact, he cannot become so by the representation of the fact.

If it state the names of the *acting* committee also, where that has been appointed, is the meaning, that the *acting* committee is to take the whole management to the exclusion of the provisional committee, their provisional character having ceased, in which case the provisional committee would not be liable? or does it mean that the provisional committee-men have appointed the acting committee or the majority of it, *on their behalf, and as their agents*, in which case they would be liable for the contracts of the acting committee, or the majority, made as such agents?

Again, does it mean, where the solicitor's name is mentioned, that such person would be regularly employed in that character, by those of the committee who acted, or that he was already appointed by *all* whose names are mentioned as their solicitor, to do all solicitor's business on their behalf; and then would arise a further question, what was the business, *at the time of the contract*, usually transacted by solicitors for companies, intending to obtain an act of Parliament, and on behalf of the company—which is a question of fact to be proved by evidence.

The same remark applies to the appointment of secretary.

powers of this or the special act, or any act incorporated therewith in relation to the compulsory taking of land for the purposes of the undertaking.

A certificate of two justices to be evidence that the capital has been subscribed.

XVII. A certificate under the hands of two justices, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof, and on the application of the promoters of the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly.

Notice of intention to take lands.

XVIII. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special act or any act incorporated therewith, they are authorized to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Service of notices on owners and occupiers of lands.

XIX. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service of notice on a corporation aggregate.

XX. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

If parties fail to treat, or in case of dispute, question to be settled as after mentioned.

XXI. If, for twenty-one days after the service of such notice, any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

Disputes as to compensation where the amount claimed does not exceed 50*l.* to be settled by two justices.

XXII. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such

of a justice make and subscribe the following declaration; that is to say,

"I, *A. B.*, do solemnly and sincerely declare, That I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the act [*naming the special act*].

" *A. B.*

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

Costs of arbitration how to be borne.

XXXIV. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

Award to be delivered to the promoters of the undertaking.

XXXV. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Submission may be made a rule of court.

XXXVI. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

Award not void through error in form.

XXXVII. No award made with respect to any question referred to arbitration under the provisions of this or the special act, shall be set aside for irregularity or error in matter of form.

Promoters of the undertaking to give notice before summoning a jury.

XXXVIII. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation they shall give not less than ten days' notice to the other party of their intention to cause such jury to be summoned, and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

Warrant for summoning jury to be addressed to the sheriff.

XXXIX. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them; and if such sheriff be interested in the matter in dispute such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate, and if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coro-

dispute, and in such case the award or determination of such sing arbitrator shall be final.

Vacancy of arbitrator to be supplied.

XXVI. If, before the matters so referred shall be determined, a arbitrator appointed by either party die, or become incapable, t party by whom such arbitrator was appointed may nominate a appoint in writing some other person to act in his place, and if, f the space of seven days after notice in writing from the other par for that purpose, he fail to do so, the remaining or other arbitrat may proceed *ex parte;* and every arbitrator so to be substituted aforesaid shall have the same powers and authorities as were vest in the former arbitrator at the time of such his death or disability aforesaid.

Appointment of umpire.

XXVII. Where more than one arbitrator shall have been appointe such arbitrators shall, before they enter upon the matters referred t them, nominate and appoint, by writing under their hands, an um pire to decide on any such matters on which they shall differ, or whic shall be referred to him under the provisions of this or the special ac and if such umpire shall die, or become incapable to act, they sha forthwith after such death or incapacity appoint another umpire i his place, and the decision of every such umpire on the matters so re ferred to him shall be final.

Board of Trade empowered to appoint an umpire on neglect of the arbitrators, in case of railway companies.

XXVIII. If in either of the cases aforesaid the said arbitrators sha refuse, or shall, for seven days after request of either party to suc arbitration, neglect to appoint an umpire, the Board of Trade, in an case in which a railway company shall be one party to the arbitra tion, and two justices in any other case, shall, on the application o either party to such arbitration, appoint an umpire, and the decisi of such umpire on the matters on which the arbitrators shall differ or which shall be referred to him under this or the special act, sha be final.

In case of death of single arbitrator the matter to begin *de novo.*

XXIX. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall hav made his award, the matters referred to him shall be determined b arbitration under the provisions of this or the special act in the sam manner as if such arbitrator had not been appointed.

If either arbitrator refuse to act, the other to proceed *ex parte.*

XXX. If, where more than one arbitrator shall have been appointe either of the arbitrators refuse or for seven days neglect to act, th other arbitrator may proceed *ex parte*, and the decision of such othe arbitrator shall be as effectual as if he had been the single arbitrato appointed by both parties.

If arbitrators fail to make their award within twenty-one days, the matter to go to the umpire.

XXXI. If, where more than one arbitrator shall have been ap pointed, and where neither of them shall refuse or neglect to act a aforesaid, such arbitrators shall fail to make their award within twenty one days after the day on which the last of such arbitrators shall hav been appointed, or within such extended time (if any) as shall hav been appointed for that purpose by both such arbitrators under thei hands, the matters referred to them shall be determined by the um pire to be appointed as aforesaid.

Power of arbitrators to call for books, &c.

XXXII. The said arbitrators or their umpire may call for the pro duction of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Arbitrator or umpire to make a declaration.

XXXIII. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence

XLV. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be examined on oath touching the subject-matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds.

Penalty on witnesses making default.

XLVI. Not less than ten days' notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party.

Notice of inquiry.

XLVII. If the party claiming compensation shall not appear at the time appointed for the inquiry, such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided.

If the party make default the inquiry not to proceed.

XLVIII. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage, and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence.

Jury to be sworn.

XLIX. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage (if any) to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special act, or any act incorporated therewith.

Sums to be paid for purchase of lands and for damage, to be assessed separately.

L. The sheriff before whom such inquiry shall be held shall give judgment for the purchase-money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase-money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere, and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

Verdict and judgment to be recorded.

LI. On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum

Costs of the inquiry how to be borne.

previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one-half of the costs of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

Particulars of the costs.

LII. The costs of any such inquiry shall, in case of difference, be settled by one of the Masters of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attornies, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

Payment of costs.

LIII. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and retained by the promoters of the undertaking out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly:

Special jury to be summoned at the request of either party.

LIV. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attornies, at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts, and the sheriff shall appoint a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.

Deficiency of special jurymen:

LV. The special jury on such inquiry shall consist of twelve of

the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

Other inquiries before same special jury by consent.

LVI. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Jurymen not to attend more than once a year.

LVII. No juryman shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

Compensation to absent parties to be determined by a surveyor appointed by two justices.

LVIII. The purchase-money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned.

Two justices to nominate a surveyor.

LIX. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Declaration to be made by the surveyor.

LX. Before such surveyor shall enter upon the duty of making such valuation as aforesaid, he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination; (that is to say),

"I, *A. B.*, do solemnly and sincerely declare, That I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me. *A. B.*
"Made and subscribed in the presence of ."

And if any surveyor shall corruptly make such declaration, or, having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

LXI. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Expenses to be borne by promoters.

LXII. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Purchase-money and compensation, how to be estimated.

LXIII. In estimating the purchase-money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special act, or any act incorporated therewith.

Where compensation to absent party has been determined by a surveyor, the party may have the same submitted to arbitration.

LXIV. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the Bank under the provisions herein contained, by reason that the owner of, or party entitled to convey, such lands or such interest therein as aforesaid, could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation, it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the monies so deposited under the provisions herein contained, by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorized or required to be submitted to arbitration.

Question to be submitted to the arbitrators.

LXV. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

If further sum awarded, promoters to pay or deposit same within fourteen days.

LXVI. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or, in default thereof, the same may be enforced by attachment, or recovered with costs by action or suit in any of the superior courts.

Costs of the arbitration.

LXVII. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators; but, if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

To be settled by arbitration or jury, at the option of the party claiming compensation.

LXVIII. If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made

satisfaction under the provisions of this or the special act, or any act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or, if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and, in default thereof, they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the superior courts.

Application of Compensation.

And with respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:—

Purchase-money payable to parties under disability amounting to 200*l.* to be deposited in the Bank.

LXIX. If the purchase-money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the Bank, in the name and with the privity of the Accountant General of the Court of Chancery in England if the same relate to lands in England or Wales, or the Accountant General of the Court of Exchequer in Ireland if the same relate to lands in Ireland, to be placed to the account there of such Accountant General, *ex parte* the promoters of the undertaking, (describing them by their proper name), in the matter of the special act, (citing it), pursuant to the method prescribed by any act for the time being in force for regulating monies paid into the said courts; and such monies shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say),

Application of monies deposited.

In the purchase or redemption of the land-tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or,

Cases.

Wyld v. Hopkins.

the scheme. If afterwards the provisional committee-man does act, he is responsible for his acts.

But there are other cases in which the question does not assume so simple a form; and where there is evidence that the defendant has not only consented to be a provisional committee-man, but has authorised his name to be inserted in a prospectus, not generally, but a particular prospectus, in which, in some cases, certain persons are described as the *acting* committee, in others, solicitors are named, or engineers, or a secretary.

If such a prospectus has been so publicly circulated, with the defendant's consent, that the jury would presume the plaintiff knew of it, or if the plaintiff has had it shewn to him, at or before the time of making the contract, and has in either case acted upon it in making the contract, the question is, what inference ought a reasonable man to draw from the contents of that paper? This must of course depend upon the terms of each particular prospectus.

If the prospectus state merely the names of the provisional committee and nothing more, and no light can be derived from the context, that circumstance does not alter the liability of the defendant. If not responsible as being one of that committee in fact, he cannot become so by the representation of the fact.

If it state the names of the *acting* committee also, where that has been appointed, is the meaning, that the *acting* committee is to take the whole management to the exclusion of the provisional committee, their provisional character having ceased, in which case the provisional committee would not be liable? or does it mean that the provisional committee-men have appointed the acting committee or the majority of it, *on their behalf, and as their agents*, in which case they would be liable for the contracts of the acting committee, or the majority, made as such agents?

Again, does it mean, where the solicitor's name is mentioned, that such person would be regularly employed in that character, by those of the committee who acted, or that he was already appointed by *all* whose names are mentioned as their solicitor, to do all solicitor's business on their behalf; and then would arise a further question, what was the business, *at the time of the contract*, usually transacted by solicitors for companies, intending to obtain an act of Parliament, and on behalf of the company—which is a question of fact to be proved by evidence.

The same remark applies to the appointment of secretary.

In the purchase of other lands to be conveyed, limited, and settle upon the like uses, trusts, and purposes, and in the same manne as the lands in respect of which such money shall have been pai stood settled; or,

If such money shall be paid in respect of any buildings taken und the authority of this or the special act, or injured by the prox imity of the works, in removing or replacing such buildings, o substituting others in their stead, in such manner as the Cour of Chancery shall direct; or,

In payment to any party becoming absolutely entitled to suc money.

Order for application and investment meanwhile.

LXX. Such money may be so applied as aforesaid upon an orde of the Court of Chancery in England or the Court of Exchequer i Ireland, made on the petition of the party who would have been en titled to the rents and profits of the lands in respect of which suc money shall have been deposited; and, until the money can be so ap plied, it may, upon the like order, be invested by the said Accountan General in the purchase of Three per Centum Consolidated or Thre per Centum Reduced Bank Annuities, or in Government or real secu rities, and the interest, dividends, and annual proceeds thereof paid t the party who would for the time being have been entitled to th rents and profits of the lands.

Sums from 20*l.* to 200*l.* to be deposited or paid to trustees.

LXXI. If such purchase-money or compensation shall not amoun to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the Bank, and applied i the manner hereinbefore directed with respect to sums amounting to o exceeding two hundred pounds, or the same may lawfully be paid t two trustees, to be nominated by the parties entitled to the rents o profits of the lands in respect whereof the same shall be payable, suc nomination to be signified by writing under the hands of the party s entitled; and in case of the coverture, infancy, lunacy, or other in capacity of the parties entitled to such monies, such nomination may lawfully be made by their respective husbands, guardians, committees or trustees; but such last-mentioned application of the monies shal not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid t such trustees, and the produce arising therefrom, shall be by suc trustees applied in the manner hereinbefore directed with respect t money paid into the Bank, but it shall not be necessary to obtain an order of the Court for that purpose.

Sums not exceeding 20*l.* to be paid to parties.

LXXII. If such money shall not exceed the sum of twenty pounds the same shall be paid to the parties entitled to the rents and profit of the lands in respect whereof the same shall be payable, for thei own use and benefit, or, in case of the coverture, infancy, idiotcy lunacy, or other incapacity of any such parties, then such money shal be paid, for their use, to the respective husbands, guardians, commit tees, or trustees of such persons.

All sums payable under contract with persons not absolutely entitled, to be paid into Bank.

LXXIII. All sums of money exceeding twenty pounds, which ma be payable by the promoters of the undertaking in respect of the tak ing, using, or interfering with any lands under a contract or agree ment with any person who shall not be entitled to dispose of suc lands, or of the interest therein contracted to be sold by him, abso lutely for his own benefit, shall be paid into the Bank or to trustee in manner aforesaid; and it shall not be lawful for any contractin party not entitled as aforesaid to retain to his own use any portion

the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorizing the taking of such lands; but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery in England or the Court of Exchequer in Ireland, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the Bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

LXXIV. Where any purchase-money or compensation paid into the Bank under the provisions of this or the special act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee-simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Upon deposit being made, the owners of the lands to convey, or, in default, the lands to vest in the promoters of the undertaking upon a deed-poll being executed.

LXXV. Upon deposit in the Bank in manner hereinbefore provided of the purchase-money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, the owner of such lands, including in such term all parties by this act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed-poll under their common seal if they be a corporation, or, if they be not a corporation, under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed-poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase-money or compensation shall

have been determined by a jury, or by arbitrators, or by a surveyo appointed by two justices as herein provided, and shall have been de posited as aforesaid, shall vest absolutely in the promoters of the under taking, and as against such parties, and all parties on behalf of whos they are hereinbefore enabled to sell and convey, the promoters o the undertaking shall be entitled to immediate possession of suc lands.

Where parties refuse to convey, or do not shew title, or cannot be found, the purchase-money to be deposited.

LXXVI. If the owner of any such lands purchased or taken b the promoters of the undertaking, or of any interest therein, on ten der of the purchase-money or compensation either agreed or awarde to be paid in respect thereof, refuse to accept the same, or neglect o fail to make out a title to such lands, or to the interest therein claime by him, to the satisfaction of the promoters of the undertaking, or if h refuse to convey or release such lands as directed by the promoters o the undertaking, or if any such owner be absent from the kingdom or cannot after diligent inquiry be found, or fail to appear on the in quiry before a jury, as herein provided for, it shall be lawful for th promoters of the undertaking to deposit the purchase-money or compen sation payable in respect of such lands, or any interest therein, in th Bank, in the name and with the privity of the Accountant General of th Court of Chancery in England or the Court of Exchequer in Ireland to be placed, except in the cases herein otherwise provided for, to hi account there, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do) subject to the control and disposition of the said Court.

Upon deposit being made, a receipt to be given, and the lands to vest upon a deed-poll being executed.

LXXVII. Upon any such deposit of money as last aforesaid being made, the cashier of the Bank shall give to the promoters of the un dertaking, or to the party paying in such money by their direction a receipt for such money, specifying therein for what and for whos use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed-poll under their common seal if they be a cor poration, or, if they be not a corporation, under the hands and seals o the said promoters, or any two of them, containing a description o the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the par ties to whose credit such deposit shall have been made, and such deed-poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase-money or compensation shall have been de posited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Application of monies so deposited.

LXXVIII. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in England or the Court of Exchequer in Ireland may, in a summary way, as to such Court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making

claim to such money or lands, or any part thereof, and may make such other order in the premises as to such Court shall seem fit.

Party in possession to be deemed the owner.

LXXIX. If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shewn to the satisfaction of the Court; and, unless the contrary be shewn as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

Costs in cases of money deposited.

LXXX. In all cases of monies deposited in the Bank under the provisions of this or the special act, or an act incorporated therewith, except where such monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say), the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in Government or real securities, and of the re-investment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment out of court of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: Provided always, that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Chancery in England or the Court of Exchequer in Ireland that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the Court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

Conveyances.

And with respect to the conveyances of lands, be it enacted as follows:—

Form of conveyances.

LXXXI. Conveyances of lands to be purchased under the provisions of this or the special act, or any act incorporated therewith, may be according to the forms in the Schedules (A.) and (B.) respectively to this act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules, or as near thereto as the circumstances of the case will admit, shall be effectual to vest the

lands thereby conveyed in the promoters of the undertaking, an shall operate to merge all terms of years attendant by express de claration, or by construction of law, on the estate or interest thereby conveyed, and to bar and to destroy all such estates tail, an all other estates, rights, titles, remainders, reversions, limitation trusts, and interests whatsoever, of and in the lands comprised such conveyances which shall have been purchased or compensat for by the consideration therein mentioned; but, although terms years be thereby merged, they shall in equity afford the same pr tection as if they had been kept on foot, and assigned to a trust for the promoters of the undertaking to attend the reversion an inheritance.

Costs of conveyances.

LXXXII. The costs of all such conveyances shall be borne by th promoters of the undertaking, and such costs shall include all charg and expenses incurred, on the part as well of the seller as of th purchaser, of all conveyances and assurances of any such lands, an of any outstanding terms or interests therein, and of deducing, ev dencing, and verifying the title to such lands, terms, or interests, an of making out and furnishing such abstracts and attested copies the promoters of the undertaking may require, and all other reaso able expenses incident to the investigation, deduction, and verifi tion of such title.

Taxation of costs of conveyances.

LXXXIII. If the promoters of the undertaking and the part entitled to any such costs shall not agree as to the amount thereo such costs shall be taxed by one of the taxing masters of the Cou of Chancery, or by a master in Chancery in Ireland, upon an orde of the same Court, to be obtained upon petition in a summary wa by either of the parties; and the promoters of the undertaking sha pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or, in default thereof, the same ma be recovered in the same way as any other costs payable under a order of the said Court, or the same may be recovered by distress i the manner hereinbefore provided in other cases of costs; and th expense of taxing such costs shall be borne by the promoters of th undertaking, unless upon such taxation one-sixth part of the amoun of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed and the amount thereof shall be ascertained by the said master, an deducted by him accordingly in his certificate of such taxation.

Entry on Lands.

And with respect to the entry upon lands by the promoters of th undertaking, be it enacted as follows:—

Payment of price to be made previous to entry, except to survey, &c.

LXXXIV. The promoters of the undertaking shall not, except b consent of the owners and occupiers, enter upon any lands whic shall be required to be purchased or permanently used for the pur poses and under the powers of this or the special act, until they sha either have paid to every party having any interest in such lands, o deposited in the Bank, in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such partie respectively for their respective interests therein: Provided always that, for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil and of setting out the line of the works, it shall be lawful for th promoters of the undertaking, after giving not less than three no more than fourteen days' notice to the owners or occupiers thereof

The Lands' Clauses Consolidation Act.

to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.

LXXXV. Provided also, that, if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made, or verdict given for the purchase-money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the Bank by way of security, as hereinafter mentioned, either the amount of purchase-money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters if they be a corporation, or, if they be not a corporation, under the hands and seals of the said promoters, or any two of them, with two sufficient sureties to be approved of by two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the Bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase-money or compensation, as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds per centum per annum, from the time of entering on such lands, until such purchase-money or compensation shall be paid to such party, or deposited in the Bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase-money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special act.

Upon deposit being made, cashier to give receipt.

LXXXVI. The money so to be deposited as last aforesaid shall be paid into the Bank in the name and with the privity of the Accountant General of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said Court; and upon such deposit being made, the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

Deposit to remain as a security, and to be applied under the direction of the Court.

LXXXVII. The money so deposited as last aforesaid shall remain in the Bank, by way of security to the parties whose lands shall so have been entered upon, for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbe-

fore mentioned, and the same may, on the application by petition o the promoters of the undertaking, be ordered to be invested in Ban annuities or Government securities, and accumulated; and upon th condition of such bond being fully performed, it shall be lawful fo the Court of Chancery in England, or the Court of Exchequer i Ireland, upon a like application, to order the money so deposited, o the funds in which the same shall have been invested, together wit the accumulation thereof, to be repaid or transferred to the promote of the undertaking, or, if such condition shall not be fully performe it shall be lawful for the said Court to order the same to be applied i such manner as it shall think fit for the benefit of the parties fo whose security the same shall so have been deposited.

The company may pay the deposit-money into the Bank by way of security during the time that the office of the Accountant General is closed.

LXXXVIII. If at any time the company be unable, by reason the closing of the office of the Accountant General of the Court Chancery in England, or the Court of Exchequer in Ireland, to ob tain his authority in respect of the payment of any sum of money authorized to be deposited in the Bank by way of security as afor said, it shall be lawful for the company to pay into the Bank, to th credit of such party or matter as the case may require, (subject, neve theless, to being dealt with as hereinafter provided, and not othe wise), such sum of money as the promoters of the undertaking shal by some writing signed by their secretary or solicitors for the tim being, addressed to the governor and company of the Bank in th behalf, request, and, upon any such payment being made, the cashi of the Bank shall give a certificate thereof; and in every such cas within ten days after the re-opening of the said Accountant General Office, the solicitor for the promoters of the undertaking shall the bespeak the direction for the payment of such sum into the name the Accountant General, and, upon production of such direction at th Bank of England, the money so previously paid in shall be placed t the credit of the said Accountant General accordingly, and the receip for the said payment be given to the party making the same in th usual way, for the purpose of being filed at the Report Office.

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase-money.

LXXXIX. If the promoters of the undertaking, or any of thei contractors, shall, except as aforesaid, wilfully enter upon and tak possession of any lands which shall be required to be purchased o permanently used for the purposes of the special act, without suc consent as aforesaid, or without having made such payment for th benefit of the parties interested in the lands, or such deposit by wa of security as aforesaid, the promoters of the undertaking shall for feit to the party in possession of such lands the sum of ten pounds over and above the amount of any damage done to such lands by rea son of such entry and taking possession as aforesaid, such penalty an damage respectively to be recovered before two justices; and if th promoters of the undertaking, or their contractors, shall, after con viction in such penalty as aforesaid, continue in unlawful possessio of any such lands, the promoters of the undertaking shall be liable t forfeit the sum of twenty-five pounds for every day they or thei contractors shall so remain in possession as aforesaid, such penalty t be recoverable by the party in possession of such lands, with costs by action in any of the superior courts: Provided always, that no thing herein contained shall be held to subject the promoters of th undertaking to the payment of any such penalties as aforesaid, i they shall *bonâ fide*, and without collusion, have paid the compensa tion agreed or awarded to be paid in respect of the said lands t

any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the Bank for the benefit of the parties interested in the lands, or made such deposit, by way of security, in respect thereof, as hereinbefore mentioned, although such person may not have been legally entitled thereto.

Decision of justices not conclusive as to the right of the promoters.

XC. On the trial of any action for any such penalty as aforesaid, the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

Proceedings in case of refusal to deliver possession of lands.

XCI. If in any case in which, according to the provisions of this or the special act, or any act incorporated therewith, the promoters of the undertaking are authorized to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same; and, upon the receipt of such warrant, the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party; or, if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and, upon application to any justice for that purpose, he shall issue his warrant accordingly.

Parties not to be required to sell part of a house.

XCII. And be it enacted, That no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house, or other building or manufactory, if such party be willing and able to sell and convey the whole thereof.

Intersected Lands.

And with respect to small portions of intersected land, be it enacted as follows:—

Owners of intersected lands may insist on sale.

XCIII. If any lands, not being situate in a town or built upon, shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

Promoters of the undertaking may insist on purchase where expense of

XCIV. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge,

culvert, or such other communication between the land so divided
the promoters of the undertaking are, under the provisions of this
the special act, or any act incorporated therewith, compellable to mak
and if the owner of such lands have not other lands adjoining su
piece of land, and require the promoters of the undertaking to ma
such communication, then the promoters of the undertaking may
quire such owner to sell to them such piece of land, and any disp

bridges, &c. exceeds the value.

as to the value of such piece of land, or as to what would be the e
pense of making such communication, shall be ascertained as her
provided for cases of disputed compensation; and on the occasion
ascertaining the value of the land required to be taken for the p
poses of the works, the jury or the arbitrators, as the case may
shall, if required by either party, ascertain, by their verdict or awa
the value of any such severed piece of land, and also what would
the expense of making such communication.

Copyholds.

And with respect to copyhold lands, be it enacted as follows:—

Conveyance of copyhold lands to be inrolled.

XCV. Every conveyance, to the promoters of the undertaking,
any lands which shall be of copyhold or customary tenure, or of
nature thereof, shall be entered on the rolls of the manor of wh
the same shall be held or parcel; and on payment to the steward
such manor of such fees as would be due to him on the surrender
the same lands to the use of a purchaser thereof, he shall make su
inrolment; and every such conveyance, when so inrolled, shall h
the like effect, in respect of such copyhold or customary lands, as
the same had been of freehold tenure; nevertheless, until such la
shall have been enfranchised by virtue of the powers hereinafter co
tained, they shall continue subject to the same fines, rents, heri
and services as were theretofore payable and of right accustomed.

Copyhold lands to be enfranchised.

XCVI. Within three months after the inrolment of the conv
ance of any such copyhold or customary lands, or within one mon
after the promoters of the undertaking shall enter upon and ma
use of the same for the purposes of the works, whichever shall fi
happen, or if more than one parcel of such lands holden of the sa
manor shall have been taken by them, then, within one month af
the last of such parcels shall have been so taken or entered on
them, the promoters of the undertaking shall procure the whole
the lands holden of such manor so taken by them to be enfranchis
and for that purpose shall apply to the lord of the manor wher
such lands are holden to enfranchise the same, and shall pay to h
such compensation in respect thereof as shall be agreed upon betwe
them and him; and if the parties fail to agree respecting the amou
of the compensation to be paid for such enfranchisement, the sa
shall be determined as in other cases of disputed compensation; a
in estimating such compensation, the loss in respect of the fin
heriots, and other services payable on death, descent, or alienation,
any other matters which would be lost by the vesting of such co
hold or customary lands in the promoters of the undertaking, or
the enfranchisement of the same, shall be allowed for.

Lord of the manor to enfranchise on payment of compensation.

XCVII. Upon payment or tender of the compensation so agre
upon or determined, or on deposit thereof in the Bank, in any of t
cases hereinbefore in that behalf provided, the lord of the man
whereof such copyhold or customary lands shall be holden sha
enfranchise such lands, and the lands so enfranchised shall for ev
thereafter be held in free and common socage; and in default of suc

enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed-poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common socage.

Apportionment of copyhold rents.

XCVIII. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land, subject to any such rent, be required to be taken for the purposes of the special act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor, on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands, taken by virtue of this or the special act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

Common Lands.

And with respect to any such lands being common or waste lands, be it enacted as follows:—

Compensation for common lands, where held of a manor, &c., how to be paid.

XCIX. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled, other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners; and upon payment or deposit in the Bank of the compensation so determined, all such commonable and other rights shall cease and be extinguished.

Lord of the manor, &c. to convey to the promoters of the undertaking, on receiving compensation for his interest.

C. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the Bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking, in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee-simple of such lands at the time of executing such conveyance; and, in default of such conveyance, it shall be lawful for the

promoters of the undertaking, if they think fit, to execute a dee poll, duly stamped, in the manner hereinbefore provided in the ca of the purchase of lands by them, and thereupon the lands in respe whereof such last-mentioned compensation shall have been deposit as aforesaid shall vest absolutely in the promoters of the unde taking, and they shall be entitled to immediate possession there subject, nevertheless, to the commonable and other rights theretofo affecting the same, until such rights shall have been extinguished payment or deposit of the compensation for the same in mann hereinafter provided.

Compensation for common lands where not held of a manor, how to be ascertained.

CI. The compensation to be paid with respect to any such land being common lands, or in the nature thereof, the right to the soil which shall belong to the commoners, as well as the compensation be paid for the commonable and other rights in or over comm lands the right in the soil whereof shall not belong to the co moners, other than the compensation to the lord of the manor, other party entitled to the soil thereof, in respect of his right the soil thereof, shall be determined by agreement between the pr moters of the undertaking and a committee of the parties entitled commonable or other rights in such lands, to be appointed as ne hereinafter mentioned.

A meeting of the parties interested to be convened.

CII. It shall be lawful for the promoters of the undertaking convene a meeting of the parties entitled to commonable or oth rights over or in such lands to be held at some convenient place the neighbourhood of the lands, for the purpose of their appointing committee to treat with the promoters of the undertaking for th compensation to be paid for the extinction of such commonable other rights; and every such meeting shall be called by publi advertisement, to be inserted once at least in two consecutive week in some newspaper circulating in the county or in the respectiv counties and in the neighbourhood in which such lands shall b situate, the last of such insertions being not more than fourteen no less than seven days prior to any such meeting; and notice of suc meeting shall also, not less than seven days previous to the holdin thereof, be affixed upon the door of the parish church where suc meeting is intended to be held, or, if there be no such church, som other place in the neighbourhood to which notices are usually affixed and if such lands be parcel or holden of a manor, a like notice shal be given to the lord of such manor.

Meeting to appoint a committee.

CIII. It shall be lawful for the meeting so called to appoint committee, not exceeding five in number, of the parties entitled t any such rights; and at such meeting the decision of the majorit of the persons entitled to commonable rights present shall bind th minority and all absent parties.

Committee to agree with the promoters of the undertaking.

CIV. It shall be lawful for the committee so chosen to enter int an agreement with the promoters of the undertaking for the com pensation to be paid for the extinction of such commonable an other rights, and all matters relating thereto, for and on behalf o themselves and all other parties interested therein; and all such par ties shall be bound by such agreement; and it shall be lawful fo such committee to receive the compensation so agreed to be paid, an the receipt of such committee, or of any three of them, for suc compensation, shall be an effectual discharge for the same; and suc compensation, when received, shall be apportioned by the committe among the several persons interested therein, according to thei

respective interests, but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or non-application thereof.

Disputes to be settled as in other cases.

CV. If, upon such Committee being appointed, they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

If no committee be appointed, the amount to be determined by a surveyor.

CVI. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found.

Upon payment of compensation payable to commoners, the lands to vest.

CVII. Upon payment or tender to such committee, or any three of them, or, if there shall be no such committee, then, upon deposit in the Bank, in the manner provided in the like case, of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed-poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

Lands in Mortgage.

And with respect to lands subject to mortgage, be it enacted as follows:—

Power to redeem mortgages.

CVIII. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special act; and, in order thereto, the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest; and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six

months' notice of his intention to redeem the same, then, a
piration of either of such notices, or at any intermediate per
payment or tender by the promoters of the undertaking to t
gagee of the principal money due on such mortgage, and th
which would become due at the end of six months from th
giving either of such notices, together with his costs and ex
any, such mortgagee shall convey or release his interest in
comprised in such mortgage to the promoters of the under
as they shall direct.

Deposit of mortgage-money on refusal to accept.

CIX. If, in either of the cases aforesaid, upon such pa
tender, any mortgagee shall fail to convey or release his i
such mortgage as directed by the promoters of the under
if he fail to adduce a good title thereto to their satisfactio
shall be lawful for the promoters of the undertaking to dep
Bank, in the manner provided by this act in like cases, the
and interest, together with the costs, if any, due on such mor
also, if such payment be made before the expiration of si
notice as aforesaid, such further interest as would at that tin
due; and it shall be lawful for them, if they think fit, to
deed-poll, duly stamped, in the manner hereinbefore provi
case of the purchase of lands by them; and thereupon,
upon such conveyance by the mortgagee, if any such be
the estate and interest of such mortgagee, and of all perso
for him, or for whom he may be a trustee, in such lands,
in the promoters of the undertaking, and they shall be e
immediate possession thereof in case such mortgagee we
entitled to such possession.

Sum to be paid when mortgage exceeds the value of the lands.

CX. If any such mortgaged lands shall be of less value
principal, interest, and costs secured thereon, the value of s
or the compensation to be made by the promoters of the un
in respect thereof, shall be settled by agreement between
gagee of such lands and the party entitled to the equity of
tion thereof on the one part, and the promoters of the under
the other part, and if the parties aforesaid fail to agree resp
amount of such value or compensation, the same shall be d
as in other cases of disputed compensation; and the amour
value or compensation, being so agreed upon or determined
paid by the promoters of the undertaking to the mortgage
faction of his mortgage-debt, so far as the same will extend;
payment or tender thereof, the mortgagee shall convey or
his interest in such mortgaged lands to the promoters of t
taking, or as they shall direct.

Deposit of money when refused on tender.

CXI. If, upon such payment or tender as aforesaid bei
any such mortgagee fail so to convey his interest in such
or to adduce a good title thereto to the satisfaction of the
of the undertaking, it shall be lawful for them to deposit th
of such value or compensation in the Bank, in the manner
by this act in like cases, and every such payment or deposi
accepted by the mortgagee in satisfaction of his mortgage-d
as the same will extend, and shall be a full discharge of su
gaged lands from all money due thereon; and it shall be l
the promoters of the undertaking, if they think fit, to e
deed-poll, duly stamped, in the manner hereinbefore provid
case of the purchase of lands by them; and thereupon such
to all such estate and interest as were then vested in the m

or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage-debt as shall not have been satisfied by such payment or deposit.

Sum to be paid where part only of mortgaged lands taken.

CXII. If a part only of any such mortgaged lands be required for the purposes of the special act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage-debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be indorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage-deed.

Deposit of money when refused on tender.

CXIII. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the Bank, in the manner provided by this act in the case of monies required to be deposited in such Bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage-debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed-poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and, in case such mortgagee were himself entitled to such possession, they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage-

money, or the residue thereof, (as the case may be), and the int
thereof respectively, upon and out of the residue of such mort
lands, or the portion thereof not required for the purposes of the
cial act, as he would otherwise have had or been entitled to fo
covering or compelling payment thereof upon or out of the whc
the lands originally comprised in such mortgage.

Compensation to be made in certain cases, if mortgage paid off before the stipulated time.

CXIV. Provided always, That, in any of the cases hereinb
provided with respect to lands subject to mortgage, if in the
gage-deed a time shall have been limited for payment of the
cipal money thereby secured, and, under the provisions hereinb
contained, the mortgagee shall have been required to accept pay
of his mortgage-money, or of part thereof, at a time earlier tha
time so limited, the promoters of the undertaking shall pay to
mortgagee, in addition to the sum which shall have been so pai
all such costs and expenses as shall be incurred by such mortga
respect of, or which shall be incidental to, the re-investment of th
so paid off, such costs, in case of difference, to be taxed and pay
thereof enforced in the manner herein provided with respect t
costs of conveyances; and if the rate of interest secured by
mortgage be higher than at the time of the same being so paid o
reasonably be expected to be obtained on re-investing the same, r
being had to the then current rate of interest, such mortgagee
be entitled to receive from the promoters of the undertaking, i
dition to the principal and interest hereinbefore provided for,
pensation in respect of the loss to be sustained by him by rea
his mortgage-money being so prematurely paid off, the amo
such compensation to be ascertained, in case of difference, as in
cases of disputed compensation; and until payment or tender of
compensation as aforesaid, the promoters of the undertaking sha
be entitled, as against such mortgagee, to possession of the mort
lands under the provision hereinbefore contained.

Rent-charges.

And, with respect to lands charged with any rent-service,
charge, or chief or other rent, or other payment or incumbranc
hereinbefore provided for, be it enacted as follows:—

Release of lands from rent-charges.

CXV. If any difference shall arise between the promoters o
undertaking and the party entitled to any such charge upon any
required to be taken for the purposes of the special act, respectin
consideration to be paid for the release of such lands therefro
from the portion thereof affecting the lands required for the pur
of the special act, the same shall be determined as in other ca
disputed compensation.

Release of part of lands from charge.

CXVI. If part only of the lands charged with any such ren
vice, rent-charge, chief or other rent, payment, or incumbranc
required to be taken for the purposes of the special act, the appor
ment of any such charge may be settled by agreement betwee
party entitled to such charge and the owner of the lands on th
part, and the promoters of the undertaking on the other part, a
such apportionment be not so settled by agreement, the same sh
settled by two justices; but if the remaining part of the lan
jointly subject be a sufficient security for such charge, then,
consent of the owner of the lands so jointly subject, it shall be l
for the party entitled to such charge to release therefrom the
required, on condition or in consideration of such other lands re
ing exclusively subject to the whole thereof.

CXVII. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the Bank in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed-poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon the rent-service, rent-charge, chief or other rent, payment or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Deposit in case of refusal to release.

CXVIII. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if, upon any such charge or portion of charge being so released, the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or, if they be a corporation, shall affix their common seal to a memorandum of such release indorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special act, and, if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or, if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

Charge to continue on lands not taken.

Leases.

And with respect to lands subject to leases, be it enacted as follows:—

CXIX. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment

Where part only of lands under lease taken, the rent to be apportioned.

he had for the recovery of the whole rent reserved by such lease; a
all the covenants, conditions, and agreements of such lease, except
to the amount of rent to be paid, shall remain in force with regard
that part of the land which shall not be required for the purposes
the special act, in the same manner as they would have done in c
such part only of the land had been included in the lease.

Tenants to be compensated.

CXX. Every such lessee as last aforesaid shall be entitled to rece
from the promoters of the undertaking compensation for the dam
done to him in his tenancy by reason of the severance of the lands
quired from those not required, or otherwise by reason of the exe
tion of the works.

Compensation to be made to tenants at will, &c.

CXXI. If any such lands shall be in the possession of any per
having no greater interest therein than as tenant for a year or fr
year to year, and if such person be required to give up possession
any lands so occupied by him before the expiration of his term or
terest therein, he shall be entitled to compensation for the valu
his unexpired term or interest in such lands, and for any just allo
ance which ought to be made to him by an in-coming tenant, and
any loss or injury he may sustain, or, if a part only of such lands
required, compensation for the damage done to him in his tenancy
severing the lands held by him, or otherwise injuriously affecting
same; and the amount of such compensation shall be determined
two justices, in case the parties differ about the same; and up
payment or tender of the amount of such compensation, all su
persons shall respectively deliver up to the promoters of the und
taking, or to the person appointed by them to take possession the
of, any such lands in their possession required for the purposes of
special act.

Where greater interest claimed than from year to year, lease to be produced.

CXXII. If any party, having a greater interest than as tenant
will, claim compensation in respect of any unexpired term or inter
under any lease or grant of any such lands, the promoters of the u
dertaking may require such party to produce the lease or grant
respect of which such claim shall be made, or the best evidence the
of in his power; and if, after demand made in writing by the p
moters of the undertaking, such lease or grant, or such best eviden
thereof, be not produced within twenty-one days, the party so clai
ing compensation shall be considered as a tenant holding only fr
year to year, and be entitled to compensation accordingly.

Limit of time for compulsory purchase.

CXXIII. And be it enacted, That the powers of the promoters
the undertaking for the compulsory purchase or taking of lands
the purposes of the special act shall not be exercised after the expi
tion of the prescribed period, and, if no period be prescribed, not aft
the expiration of three years from the passing of the special act.

Interests omitted to be purchased.

And with respect to interests in lands which have by mistake be
omitted to be purchased, be it enacted as follows:—

Promoters of the undertaking empowered to purchase interests in lands the purchase whereof may have been omitted by mistake.

CXXIV. If, at any time after the promoters of the undertakin
shall have entered upon any lands which, under the provisions of th
or the special act, or any act incorporated therewith, they were au
thorized to purchase, and which shall be permanently required fo
the purposes of the special act, any party shall appear to be entitle
to any estate, right, or interest in or charge affecting such lands whic
the promoters of the undertaking shall, through mistake or inadver
tence, have failed or omitted duly to purchase or to pay compensatio
for, then, whether the period allowed for the purchase of lands shal

have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided, within six months after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or, in case the same shall be disputed, then, within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase-money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase-money or compensation shall be agreed on or awarded and paid in like manner as, according to the provisions of this act, the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

How value of such lands to be estimated.

CXXV. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, (as the case may be), shall assess the same according to what they shall find to have been the value of such lands, estate or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

Promoters of the undertaking to pay the costs of litigation as to such lands.

CXXVI. In addition to the said purchase-money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

Sale of superfluous Land.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows:—

Lands not wanted to be sold, or, in default, to vest in owners of adjoining lands.

CXXVII. Within the prescribed period, or, if no period be prescribed, within ten years after the expiration of the time limited by the special act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase-money arising from such sales to the purposes of the special act; and, in default thereof, all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands ad-

joining thereto, in proportion to the extent of their lands respecti adjoining the same.

Lands to be offered to owner of lands from which they were originally taken or to adjoining owners.

CXXVIII. Before the promoters of the undertaking dispose of such superfluous lands, they shall, unless such lands be situate wi a town, or be lands built upon or used for building purposes, offer to sell the same to the person then entitled to the lands (if from which the same were originally severed; or, if such perso fuse to purchase the same, or cannot after diligent inquiry be fo then the like offer shall be made to the person or to the several sons whose lands shall immediately adjoin the lands so proposed sold, such persons being capable of entering into a contract for purchase of such lands; and where more than one such person be entitled to such right of pre-emption, such offer shall be mad such persons in succession, one after another, in such order a promoters of the undertaking shall think fit.

Right of pre-emption to be claimed within six weeks.

CXXIX. If any such persons be desirous of purchasing such l then, within six weeks after such offer of sale, they shall signify desire in that behalf to the promoters of the undertaking, or if decline such offer, or if for six weeks they neglect to signify thei sire to purchase such lands, the right of pre-emption of every person so declining or neglecting in respect of the lands include such offer shall cease; and a declaration in writing made bef justice by some person not interested in the matter in ques stating that such offer was made and was refused, or not acce within six weeks from the time of making the same, or that the son or all the persons entitled to the right of pre-emption were o the country, or could not after diligent inquiry be found, or were no pable of entering into a contract for the purchase of such lands, in all courts be sufficient evidence of the facts therein stated.

Differences as to price to be settled by arbitration.

CXXX. If any person entitled to such pre-emption be desiro purchasing any such lands, and such person and the promoters of undertaking do not agree as to the price thereof, then such price be ascertained by arbitration, and the costs of such arbitration be in the discretion of the arbitrators.

Lands to be conveyed to the purchasers.

CXXXI. Upon payment or tender to the promoters of the un taking of the purchase-money so agreed upon or determined as af said, they shall convey such lands to the purchasers thereof by under the common seal of the promoters of the undertaking, if be a corporation, or, if not a corporation, under the hands and sea the promoters of the undertaking, or any two of the directors or m gers thereof acting by the authority of the body; and a deed so cuted shall be effectual to vest the lands comprised therein in purchaser of such lands for the estate which shall so have been chased by him; and a receipt under such common seal, or under hands of two of the directors or managers of the undertaking as af said, shall be a sufficient discharge to the purchaser of any such l for the purchase-money in such receipt expressed to be received.

Effect of the word "grant" in conveyances.

CXXXII. In every conveyance of lands to be made by the moters of the undertaking under this or the special act, the "grant" shall operate as express covenants by the promoters of undertaking, for themselves and their successors, or for themsel their heirs, executors, administrators, and assigns, as the case may with the respective grantees therein named, and the successors, h executors, administrators, and assigns of such grantees, accordin the quality or nature of such grants, and of the estate or inte

therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say),

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee-simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them:

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns, (as the case may be), shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors from all incumbrances created by the promoters of the undertaking:

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns, (as the case may be), by the promoters of the undertaking, or their successors, and all other persons claiming under them:

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

Land-tax and poor's rate to be made good.

CXXXIII. And be it enacted, That, if the promoters of the undertaking become possessed by virtue of this or the special act, or any act incorporated therewith, of any lands charged with the land-tax, or liable to be assessed to the poor's rate, they shall, from time to time, until the works shall be completed and assessed to such land-tax or poor's rate, be liable to make good the deficiency in the several assessments for land-tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special act; and, on demand of such deficiency, the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land-tax, they may do so in accordance with the powers in that behalf given by the acts for the redemption of the land-tax.

Service of notices upon company.

CXXXIV. And be it enacted, That any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or, in case there be no secretary, the solicitor of the said promoters.

Tender of amends.

CXXXV. And be it enacted, That, if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the

execution of this or the special act, or any act incorporated t with, or by virtue of any power or authority thereby given, a before action brought in respect thereof, such party make ten sufficient amends to the party injured, such last-mentioned party not recover in any such action; and if no such tender shall have made, it shall be lawful for the defendant, by leave of the Court such action shall be pending, at any time before issue joined, t into court such sum of money as he shall think fit, and there such proceedings shall be had as in other cases where defendan allowed to pay money into court.

Recovery of Penalties.

And with respect to the recovery of forfeitures, penalties costs, be it enacted as follows:—

Penalties to be summarily recovered before two justices.

CXXXVI. Every penalty or forfeiture imposed by this or th cial act, or by any bye-law made in pursuance thereof, the recov which is not otherwise provided for, may be recovered by sum proceeding before two justices; and, on complaint being made t justice, he shall issue a summons requiring the party compl against to appear before two justices, at a time and place to be n in such summons; and every such summons shall be served o party offending either in person, or by leaving the same with inmate at his usual place of abode; and upon the appearance party complained against, or, in his absence, after proof of th service of such summons, it shall be lawful for any two justic proceed to the hearing of the complaint, and that although no mation in writing or in print shall have been exhibited before t and upon proof of the offence, either by the confession of the complained against, or upon the oath of one credible witness or it shall be lawful for such justices to convict the offender, and such conviction to adjudge the offender to pay the penalty or feiture incurred, as well as such costs attending the convictio such justices shall think fit.

Penalties to be levied by distress.

CXXXVII. If, forthwith upon any such adjudication as afore the amount of the penalty or forfeiture, and of such costs as a said, be not paid, the amount of such penalty and costs sha levied by distress; and such justices, or either of them, shall their or his warrant of distress accordingly.

Distress how to be levied.

CXXXVIII. Where, in this or the special act, or any act i porated therewith, any sum of money, whether in the natu penalty, costs, or otherwise, is directed to be levied by distress, sum of money shall be levied by distress and sale of the goods chattels of the party liable to pay the same; and the overplus ar from the sale of such goods and chattels, after satisfying such su money and the expenses of the distress and sale shall be returne demand, to the party whose goods shall have been distrained.

Application of penalties.

CXXXIX. The justices by whom any such penalty or forfe shall be imposed may, where the application thereof is not other provided for, award not more than one half thereof to the informer shall award the remainder to the overseers of the poor of the p in which the offence shall have been committed, to be applied i of the poor's rate of such parish; or if the place wherein the off shall have been committed shall be extra-parochial, then such tices shall direct such remainder to be applied in aid of the p rate of such extra-parochial place, or, if there shall not be any p rate therein, in aid of the poor's rate of any adjoining paris district.

CXL. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

Distress against the treasurer.

CXLI. No distress levied by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage, in an action upon the case.

Distress not unlawful for want of form.

CXLII. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Penalties to be sued for within six months.

CXLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath, or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Penalty on witnesses making default.

CXLIV. The justices before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule (C.) to this act annexed.

Form of conviction.

CXLV. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

Proceedings not to be quashed for want of form.

CXLVI. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture, under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general quarter-sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or

Parties allowed to appeal to quarter-sessions on giving security.

adjudication, nor unless ten days' notice in writing of such stating the nature and grounds thereof, be given to the party whom the appeal shall be brought, nor unless the appellant fo after such notice enter into recognizances, with two sufficie ties, before a justice, conditioned duly to prosecute such app to abide the order of the Court thereon.

Court to make such order as they think reasonable.

CXLVII. At the quarter-sessions for which such notice given, the Court shall proceed to hear and determine the app summary way, or they may, if they think fit, adjourn it to th ing sessions; and, upon the hearing of such appeal, the Cou if they think fit, mitigate any penalty or forfeiture, or they firm or quash the adjudication, and order any money paid appellant, or levied by distress upon his goods, to be returned and may also order such further satisfaction to be made to t injured, as they may judge reasonable; and they may ma order concerning the costs, both of the adjudication and of th as they may think reasonable.

Receiver of the metropolitan police district to receive penalties incurred within his district.

CXLVIII. Provided always, and be it enacted, That, notwi ing any thing herein or in the special act, or any act inco therewith, contained, every penalty or forfeiture imposed b the special act, or any act incorporated therewith, or by any in pursuance thereof, in respect of any offence which shall ta within the metropolitan police district, shall be recovered, accounted for, and, except where the application thereof is o specially provided for, shall be paid to the receiver of the m tan police district, and shall be applied in the same manner ties or forfeitures, other than fines upon drunken persons, constables for misconduct, or for assaults upon police consta directed to be recovered, enforced, accounted for, paid, and ap an act passed in the third year of the reign of her present intituled "An Act for regulating the Police Courts in the polis," and every order or conviction of any of the police mag in respect of any such forfeiture or penalty, shall be subjec like appeal, and upon the same terms, as is provided in respe order or conviction of any of the said police magistrates by last-mentioned act; and every magistrate by whom any orde viction shall have been made shall have the same power of over the witnesses who shall have been examined, and such shall be entitled to the same allowance of expenses as he would have had or been entitled to in case the order, convict appeal had been made in pursuance of the provisions of the s mentioned act.

2 & 3 Vict. c. 71.

Persons giving false evidence liable to penalties of perjury.

CXLIX. And be it enacted, That any person who, upon a mination upon oath under the provisions of this or the spe or any act incorporated therewith, shall wilfully and corrup false evidence, shall be liable to the penalties of wilful and perjury.

Access to special Act.

And with respect to the provision to be made for affordin to the special act by all parties interested, be it enacted as fol

Copies of special act to be kept and deposited, and allowed to be inspected.

CL. The company shall, at all times after the expiratio months after the passing of the special act, keep in their p office of business a copy of the special act, printed by the pri her Majesty, or some of them; and where the undertaking a railway, canal, or other like undertaking, the works of whi

not be confined to one town or place, shall also, within the space of such six months, deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend, a copy of such special act so printed as aforesaid; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections, by an act passed in the first year of the reign of her present Majesty, intituled "An Act to compel Clerks of the Peace for Counties, and other Persons, to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament." 7 Will. 4 & 1 Vict. c. 83.

CLI. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited. Penalty on company failing to keep or deposit.

CLII. And be it enacted, That this act shall not extend to Scotland. Act not to extend to Scotland.

CLIII. And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of Parliament. Act may be amended this session.

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

SCHEDULE (A.)

Form of Conveyance.

I, , of , in consideration of the sum of , paid to me [*or*, , *as the case may be*], into the Bank of England [*or*, "Bank of Ireland"], in the name and with the privity of the Accountant General of the Court of Chancery, *ex parte* "The promoters of the undertaking" [*naming them*], or to *A. B.*, of , and *C. D.*, of , two trustees appointed to receive the same], pursuant to the [*here name the special act*], by the [*here name the company, or other promoters of the undertaking*], incorporated [*or*, "constituted"] by the said act, do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said act empowered to convey, to hold the premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said act. In witness whereof I have hereunto set my hand and seal, the day of , in the year of our Lord .

tion], their successors and assigns, for ever, according meaning of the said act, they the said company [*or of* successors and assigns, yielding and paying unto me, m clear yearly rent of , by equal quarterly [*or*, " *upon*] portions, henceforth, on the [*stating the days*] deductions. In witness whereof I hereunto set my han day of , in the year of our Lord .

SCHEDULE (C.)

Form of Conviction.

to wit.

Be it remembered, that, on the day of Lord , *A. B.* is convicted before us, *C.*, *D.*, tw tices of the peace for the county of , [*here des rally, and the time and place when and where comm* [*here name the special act*]. Given under our hands year first above written.

8 Vict. Cap. 20.

An Act for consolidating in One Act certain Provi in Acts authorizing the making of Railways.

The Railways' Clauses Consolidation Act.

Whereas it is expedient to comprise in one gen visions usually introduced into acts of Parliam construction of railways, and that, as well for the the necessity of repeating such provisions in eacl relating to such undertakings, as for ensuring g the provisions themselves: And whereas a bill Parliament, intituled " An Act for consolidating Provisions usually inserted in Acts authorizing th Undertakings of a Public Nature," and which is " The Lands' Clauses Consolidation Act. 1845

provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act which shall be incorporated with such act, form part of such act, and be construed together therewith as forming one act.

And with respect to the construction of this act and of other acts to be incorporated therewith, be it enacted as follows:— Interpretations in this act:

II. The expression "the special act," used in this act, shall be construed to mean any act which shall be hereafter passed authorizing the construction of a railway, and with which this act shall be so incorporated as aforesaid; and the word "prescribed," used in this act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act; and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special act" had been used; and the expression "the lands" shall mean the lands which shall by the special act be authorized to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the railway and works, of whatever description, by the special act authorized to be executed. "special act:" "prescribed:" "the lands:" "the undertaking."

III. The following words and expressions, both in this and the special act, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say), Interpretations in this and the special act:

Words importing the singular number only shall include the plural number; and words importing the plural number only shall include also the singular number: number:

Words importing the masculine gender only shall include females: gender:

The word "lands" shall include messuages, lands, tenements, and hereditaments of any tenure: "lands:"

The word "lease" shall include an agreement for a lease: "lease:"

The word "toll" shall include any rate or charge or other payment payable under the special act for any passenger, animal, carriage, goods, merchandize, articles, matters, or things conveyed on the railway: "toll:"

The word "goods" shall include things of every kind conveyed upon the railway: "goods:"

The word "month" shall mean calendar month: "month:"

The expression "superior courts" shall mean her Majesty's superior courts of record at Westminster or Dublin, as the case may require: "superior courts:"

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath: "oath:"

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town: "county:"

The word "sheriff" shall include under-sheriff or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff or clerk of the peace, the expression "the sheriff," or the expression "the clerk of the "the sheriff:" "the clerk of the peace:"

peace," shall in such case be construed to mean the sheriff or t clerk of the peace of the county, city, borough, liberty, cinq port, or place where such lands shall be situate; and if the la in question, being the property of one and the same party, situate not wholly in one county, city, borough, liberty, cinq port, or place, the same expression shall be construed to m

"the clerk of the peace:" the sheriff or clerk of the peace of any county, city, borou liberty, cinque-port, or place where any part of such lands sh be situate:

"justice:" The word "justice" shall mean justice of the peace acting for county, city, borough, liberty, cinque-port, or place where matter requiring the cognizance of any such justice shall ar and who shall not be interested in the matter; and where su matter shall arise in respect of lands, being the property of and the same party, situate not wholly in any one county, ci borough, liberty, cinque-port, or place, shall mean a justice ing for the county, city, borough, liberty, cinque-port, or pla where any part of such lands shall be situate, and who shall be interested in such matter; and where any matter shall authorized or required to be done by two justices, the expressi

"two justices:" "two justices" shall be understood to mean two justices asse bled and acting together:

"owner:" Where, under the provisions of this or the special act, any not shall be required to be given to the owner of any lands, or wh any act shall be authorized or required to be done with the c sent of any such owner, the word "owner" shall be underst to mean any person or corporation who, under the provisions this or the special act, or any act incorporated therewith, wo be enabled to sell and convey lands to the company:

"the company:" The expression "the company" shall mean the company party which shall be authorized by the special act to constru the railway:

"the railway:" The expression "the railway" shall mean the railway and wor by the special act authorized to be constructed:

"board of trade:" The expression "the Board of Trade" shall mean the lords of t committee of her Majesty's Privy Council appointed for Tra and Foreign Plantations:

"the Bank." The expression "the Bank" shall mean the Bank of Englan where the same shall relate to monies to be paid or deposited respect of lands situate in England; and shall mean the Bank Ireland where the same shall relate to monies to be paid or dep sited in respect of lands situate in Ireland:

"turnpike road," Ireland: The expression "turnpike road" shall, when applied to any roa in Ireland, include any road upon which her Majesty's mails a or shall be carried in mail carriages; or such other roads as th Commissioners of Public Works in Ireland shall consider t require arches of greater width or height than by this act i required for public carriage roads:

"surveyor," Ireland: The expression "surveyor," applied to a road or highway, shall as to railways in Ireland, include the county surveyor:

"overseers of the poor," Ireland. The expression "overseers of the poor," when applied to Ireland shall include the poor-law guardians of the electoral division an the clerk of the guardians of the union through which such railway may pass.

Short title of the act. IV. And be it enacted, That, in citing this act in other acts o

Parliament, and in legal instruments, it shall be sufficient to use the expression "The Railways' Clauses Consolidation Act, 1845."

The Railways' Clauses Consolidation Act.

V. And whereas it may be convenient, in some cases, to incorporate with acts hereafter to be passed some portion only of the provisions of this act; be it therefore enacted, That, for the purpose of making any such incorporation, it shall be sufficient in any such act to enact, that the clauses of this act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this act, in the words introductory to the enactment with respect to such matter) shall be incorporated with such act, and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

Form in which portions of this act may be incorporated in other acts.

Construction of Railway.

And with respect to the construction of the railway and the works connected therewith, be it enacted as follows:—

The construction of the railway to be subject to the provisions of this act and the Lands' Clauses Consolidation Act.

VI. In exercising the power given to the company by the special act to construct the railway, and to take lands for that purpose, the company shall be subject to the provisions and restrictions contained in this act and in the said Lands' Clauses Consolidation Act; and the company shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties, by reason of the exercise, as regards such lands, of the powers by this or the special act, or any act incorporated therewith, vested in the company; and, except where otherwise provided by this or the special act, the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands' Clauses Consolidation Act, for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned act shall be applicable to determining the amount of any such compensation, and to enforcing the payment or other satisfaction thereof.

Errors and omissions in plans to be corrected.

VII. If any omission, misstatement, or erroneous description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described on the plans or books of reference mentioned in the special act, or in the schedule to the special act, it shall be lawful for the company, after giving ten days' notice to the owners of the lands affected by such proposed correction, to apply to two justices for the correction thereof; and if it shall appear to such justices that such omission, misstatement, or erroneous description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission, and in what respect any such matter shall have been misstated or erroneously described; and such certificate shall be deposited with the clerks of the peace of the several counties in which the lands affected thereby shall be situate, and shall also be deposited with the parish clerks of the several parishes in England, and with the postmasters of the post-towns in or nearest to such parishes in Ireland, in which the lands affected thereby shall be situate; and such certificate shall be kept by such

clerks of the peace, parish-clerks, and postmasters respectively alo with the other documents to which they relate; and thereupon su plan, book of reference, or schedule shall be deemed to be correc according to such certificate; and it shall be lawful for the compa to make the works in accordance with such certificate.

Works not to be proceeded with until plans of all alterations authorized by Parliament have been deposited.

VIII. It shall not be lawful for the company to proceed in execution of the railway unless they shall have, previously to commencement of such work, deposited with the clerks of the pe of the several counties in or through which the railway is intend to pass a plan and section of all such alterations from the origi plan and section as shall have been approved of by Parliament, on same scale and containing the same particulars as the original p and section of the railway, and shall also have deposited with clerks of the several parishes in England, and the postmasters of post-towns in or nearest to such parishes in Ireland, in or throu which such alterations shall have been authorized to be made, co or extracts of or from such plans and sections as shall relate to s parishes respectively.

Clerks of the peace, &c. to receive plans of alterations, and allow inspection.

IX. The said clerks of the peace, parish-clerks, and postmas shall receive the said plans and sections of alterations, and copies extracts thereof respectively, and shall retain the same, as well as said original plans and sections, and shall permit all persons interes to inspect any of the documents aforesaid, and to make copies and tracts of and from the same, in the like manner, and upon the l terms, and under the like penalty for default, as is provided in case of the original plans and sections by an act passed in the f year of the reign of her present Majesty, intituled "An Act to co pel Clerks of the Peace for Counties and other Persons to take Custody of such Documents as shall be directed to be deposited w them under the Standing Orders of either House of Parliament."

7 Will. 4 & 1 Vict. c. 83.

Copies of plans, &c. to be evidence.

X. True copies of the said plans and books of reference, or of a alteration or correction thereof, or extract therefrom, certified by such clerk of the peace, which certificate such clerk of the peace sh give to all parties interested, when required, shall be received in courts of justice or elsewhere as evidence of the contents thereof.

Limiting deviation from datum line described on sections, &c.

XI. In making the railway, it shall not be lawful for the compa to deviate from the levels of the railway as referred to the comm datum line described in the section approved of by Parliament, a as marked on the same, to any extent exceeding in any place five fe or, in passing through a town, village, street, or land continuous built upon, two feet, without the previous consent in writing of t owners and occupiers of the land in which such deviation is intended be made; or, in case any street or public highway shall be affected b such deviation, then the same shall not be made without the like co sent of the trustees or commissioners having the control of such stre or public highway, or, if there be no such trustees or commissioner without the like consent of two or more justices of the peace in pet sessions assembled for that purpose, and acting for the district which such street or public highway may be situated, or without th like consent of the commissioners for any public sewers, or the propri tors of any canal, navigation, gasworks, or waterworks affected b such deviation: Provided always, that it shall be lawful for the com pany to deviate from the said levels to a further extent without suc consent as aforesaid, by lowering solid embankments or viaducts, pro vided that the requisite height of headway as prescribed by act o

Proviso.

Parliament be left for roads, streets, or canals passing under the same: Provided also, that notice of every petty sessions to be holden for the purpose of obtaining such consent of two justices as is hereinbefore required shall, fourteen days previous to the holding of such petty sessions, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made, or, if there be no church, some other place to which notices are usually affixed.

Proviso.

Public notice to be given previous to making greater deviations.

XII. Before it shall be lawful for the company to make any greater deviation from the level than five feet, or, in any town, village, street, or land continuously built upon, two feet, after having obtained such consent as aforesaid, it shall be incumbent on the company to give notice of such intended deviation by public advertisement, inserted once at least in two newspapers, or twice at least in one newspaper, circulating in the district or neighbourhood where such deviation is intended to be made, three weeks at least before commencing to make such deviation; and it shall be lawful for the owner of any lands prejudicially affected thereby, at any time before the commencement of the making of such deviation, to apply to the Board of Trade, after giving ten days' notice to the company, to decide whether, having regard to the interests of such applicants, such proposed deviation is proper to be made; and it shall be lawful for the Board of Trade, if they think fit, to decide such question accordingly, and by their certificate in writing either to disallow the making of such deviation or to authorize the making thereof, either simply or with any such modification as shall seem proper to the Board of Trade; and, after any such certificate shall have been given by the Board of Trade, it shall not be lawful for the company to make such deviation, except in conformity with such certificate.

Power to the owners of adjoining lands to appeal to the Board of Trade against such deviations.

Arches, tunnels, &c. to be made as marked on deposited plans.

XIII. Where in any place it is intended to carry the railway on an arch or arches or other viaduct, as marked on the said plan or section, the same shall be made accordingly; and where a tunnel is marked on the said plan or section as intended to be made at any place, the same shall be made accordingly, unless the owners, lessees, and occupiers of the land in which such tunnel is intended to be made shall consent that the same shall not be so made.

Limiting deviations from gradients, curves, &c.

XIV. It shall not be lawful for the company to deviate from or alter the gradients, curves, tunnels, or other engineering works described in the said plan or section, except within the following limits, and under the following conditions: (that is to say),

Subject to the above provisions in regard to altering levels, it shall be lawful for the company to diminish the inclination or gradients of the railway to any extent, and to increase the said inclination or gradients as follows: (that is to say), in gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet per mile, or to any further extent which shall be certified by the Board of Trade to be consistent with the public safety, and not prejudicial to the public interest; and in gradients of or exceeding the inclination of one in a hundred, to any extent not exceeding three feet per mile, or to any further extent which shall be so certified by the Board of Trade as aforesaid.

It shall be lawful for the company to diminish the radius of any curve described in the said plan to any extent which shall leave a radius of not less than half a mile, or to any further extent

tained shall exempt the company from an action for nuisance or injury, if any, done, in the exercise of the powers hereinbefore to the lands or habitations of any party other than the party lands shall be so taken or used for any of the purposes aforesaid vided also, that no stone or slate quarry, brick field, or othe place, which, at the time of the passing of the special act, sh commonly worked or used for getting materials therefrom fo purpose of selling or disposing of the same, shall be taken or us the company, either wholly or in part, for any of the purposes hereinbefore mentioned.

Company to give notice previous to such temporary possession.

XXXIII. In case any such lands shall be required for spoil or for side cuttings, or for obtaining materials for the construct repair of the railway, the company shall, before entering thereon cept in the case of accident to the railway requiring immediate re tion), give three weeks' notice in writing to the owners and occ of such lands of their intention to enter upon the same for such poses; and in case the said lands are required for any of the purposes hereinbefore mentioned, the company shall (except i cases aforesaid) give ten days' like notice thereof, and the com shall, in such notices respectively, state the substance of the prov hereinafter contained respecting the right of such owner or occ to require the company to purchase any such lands, or to re compensation for the temporary occupation thereof, as the case be.

Service of notices on owners and occupiers of lands.

XXXIV. The said notice shall either be served personally on owners and occupiers, or left at their last usual place of abode, i such can, after diligent inquiry, be found, and in case any such shall be absent from the United Kingdom, or cannot be found diligent inquiry, shall also be left with the occupier of such lan if there be no such occupier, shall be affixed upon some conspi part of such lands.

Power to owner to object that other lands ought to be taken.

XXXV. In any case in which a notice of three weeks is h before required to be given, it shall be lawful for the owner or pier of the lands therein referred to, within ten days after the s of such notice, by notice in writing to the company to object company making use of such lands, either on the ground tha lands proposed to be taken for the purposes aforesaid, or some thereof, or of the materials contained therein, are essential to tained by such owner, in order to the beneficial enjoyment of neighbouring lands belonging to him, or on the ground that lands lying contiguous or near to those proposed to be taken be more fitting to be used for such purposes by the company upon objection being so made, such proceedings may be had as h after mentioned.

Power to two justices to order that the lands and materials shall not be taken.

XXXVI. If the objection so made be on the ground that the proposed to be taken, or some part thereof, or of the materials tained therein, are essential to be retained by the owner in or the beneficial enjoyment of other neighbouring lands belongi him, it shall be lawful for any justice, on the application of owner, to summon the company to appear before two justices time and place to be named in the summons, such time not being than the expiration of the said twenty-one days' notice; and o appearance of the company, or, in their absence, upon proof o service of the summons, it shall be lawful for such justices to in into the truth of such ground of objection; and if it appear to

special act granted, the company shall do as little damage as can be, and shall make full satisfaction in manner herein, and in the special act, and any act incorporated therewith, provided, to all parties interested, for all damage by them sustained by reason of the exercise of such powers.

Works below high-water mark not to be executed without the consent of the Lords of the Admiralty.

XVII. It shall not be lawful for the company to construct on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far up the same as the tide flows and re-flows, any work, or to construct any railway or bridge across any creek, bay, arm of the sea, or navigable river, where and so far up the same as the tide flows and re-flows, without the previous consent of her Majesty, her heirs and successors, to be signified in writing under the hands of two of the commissioners of her Majesty's woods, forests, land revenues, works, and buildings, and of the Lord High Admiral of the United Kingdom of Great Britain and Ireland, or the commissioners for executing the office of Lord High Admiral aforesaid for the time being, to be signified in writing under the hand of the secretary of the admiralty, and then only according to such plan, and under such restrictions and regulations, as the said commissioners of her Majesty's woods, forests, land revenues, works, and buildings, and the said Lord High Admiral, or the said commissioners, may approve of, such approval being signified as last aforesaid; and where any such work, railway, or bridge shall have been constructed, it shall not be lawful for the company at any time to alter or extend the same without obtaining, previously to making any such alteration or extension, the like consents or approvals; and if any such work, railway, or bridge shall be commenced or completed contrary to the provisions of this act, it shall be lawful for the said commissioners of her Majesty's woods, forests, land revenues, works, and buildings, or the said Lord High Admiral, or the said commissioners for executing the office of Lord High Admiral, to abate and remove the same, and to restore the site thereof to its former condition, at the cost and charge of the company; and the amount thereof may be recovered in the same manner as a penalty is recoverable against the company.

Alteration of water and gas pipes, &c.

XVIII. It shall be lawful for the company, for the purpose of constructing the railway, to raise, sink, or otherwise alter the position of any of the watercourses, water pipes, or gas pipes belonging to any of the houses adjoining or near to the railway, and also the mains and other pipes laid down by any company or society who may furnish the inhabitants of such houses or places with water or gas, and also to remove all other obstructions to such construction, so as the same respectively be done with as little detriment and inconvenience to such company, society, or inhabitants as the circumstances will admit, and be done under the superintendence of the company to which such water pipes or gas pipes belong, and of the several commissioners or trustees, or persons having control of the pavements, sewers, roads, streets, highways, lanes, and other public passages and places within the parish or district where such mains, pipes, or obstructions shall be situate, or of their surveyor, if they or he think fit to attend, after receiving not less than forty-eight hours' notice for that purpose.

Company not to disturb pipes until they have laid down others.

XIX. Provided always, That it shall not be lawful for the company to remove or displace any of the mains or pipes (other than private service pipes), syphons, plugs, or other works belonging to any such company or society, or to do any thing to impede the pas-

APPENDIX.

STATUTES.

The Railways' Clauses Consolidation Act.

sage of water or gas into or through such mains or pipes, unti
and sufficient mains or pipes, syphons, plugs, and all other
necessary or proper for continuing the supply of water or gas
ficiently as the same was supplied by the mains or pipes prop
be removed or displaced, shall, at the expense of the company
been first made and laid down in lieu thereof, and be ready f
in a position as little varying from that of the pipes or mai
posed to be removed or displaced as may be consistent wi
construction of the railway, and to the satisfaction of the su
or engineer of such water or gas company or society, or, in
disagreement between such surveyor or engineer and the co
as a justice shall direct.

Pipes not to be laid contrary to any act, and 18 inches surface road to be retained.

XX. It shall not be lawful for the company to lay down an
pipes contrary to the regulations of any act of Parliament r
to such water or gas company or society, or to cause any road
lowered for the purposes of the railway, without leaving a co
of not less than eighteen inches from the surface of the roa
such mains or pipes.

Company to make good all damage.

XXI. The company shall make good all damage done to th
perty of the water or gas company or society, by the distu
thereof, and shall make full compensation to all parties for a
or damage which they may sustain by reason of any interf
with the mains, pipes, or works of such water or gas comp
society, or with the private service pipes of any person suppl
them with water.

When railway crosses pipes, company to make a culvert.

XXII. If it shall be necessary to construct the railway or
the works over any mains or pipes of any such water or gas co
or society, the company shall, at their own expense, constru
maintain a good and sufficient culvert over such main or pipe,
to leave the same accessible for the purpose of repairs.

Penalty for obstructing supply of gas or water.

XXIII. If by any such operations as aforesaid the company
interrupt the supply of any water or gas, they shall forfeit t
pounds for every day that such supply shall be so interrupte
such penalty shall be appropriated to the benefit of the poor
parish in which such obstruction shall occur, in such manner
overseers of the poor of the parish shall direct.

Penalty for obstructing construction of railway.

XXIV. If any person wilfully obstruct any person acting
the authority of the company in the lawful exercise of their p
in setting out the line of the railway, or pull up or remove any
or stakes driven into the ground for the purpose of so settin
the line of the railway, or deface or destroy any marks made f
same purpose, he shall forfeit a sum not exceeding five poun
every such offence.

Drainage of Lands.

And whereas there are large tracts of land in Ireland subj
flood and injury by water, and the rivers, streams, and waterc
are in many places obstructed by shoals, insufficient bridges
verts, weirs, and other works, whereby the waters thereof are el
above their natural level: and whereas an act of Parliamen
passed in the second year of the reign of his late Majesty King
1 & 2 W. 4, c. 57. liam the Fourth, intituled "An Act to empower Landed Propr
in Ireland to sink, embank, and remove Obstructions in Ri
and whereas another act was passed in the sixth year of the rei
5 & 6 Vict. c. 89. her present Majesty, intituled "An Act to promote the Drains
Lands, and Improvement of Navigation and Water Power in

nexion with such Drainage, in Ireland;" and by the said last-mentioned act public commissioners were appointed to carry the said last-recited act into execution: and whereas it is essential, for carrying into effect the purposes of the said acts, and for the improvement of agriculture, that ample provision be made in all railway works in Ireland for the free and uninterrupted passage of the waters at such level as will be sufficient not only for the present but all future discharge of the waters from lands crossed by or being on either side of such works, and that the bridges of railways crossing all watercourses, rivers, lakes, or estuaries which are or hereafter may be made navigable, shall be so constructed as to admit of the commodious navigation of the same: therefore, with respect to the provision to be made for the drainage of land in Ireland which may be crossed by the railway, and for the protection of the navigation connected therewith, be it enacted as follows:—

The company from time to time to submit to the drainage commissioners in Ireland plans, &c. of the portion of the railway which they are about to execute.

XXV. If the special act shall authorize the construction of a railway in Ireland, the company shall and they are hereby required, from time to time, before proceeding to construct any portion of the railway, to submit to the commissioners acting in execution of the said act of the sixth year of her present Majesty, or any act amending the same, such plans, sections, and surveys as shall be necessary to enable the said commissioners to decide upon the number and adequacy of the waterways of all bridges, culverts, tunnels, watercourses, and other works across the line of such portion as aforesaid of the railway, for the free and uninterrupted discharge of the waters from all lands crossed by or lying on either side of or near the railway, at such level as shall, in the opinion of the said commissioners, be sufficient for the present and prospective drainage and improvement of such lands, and (in cases of rivers, lakes, estuaries, or watercourses, which are now or may be capable of being made navigable) upon the height and adequacy of all bridges and works crossing the same, for the commodious navigation thereof.

Such commissioners to investigate and report on the works necessary for drainage.

XXVI. The said commissioners shall and they are hereby required, without any unnecessary delay, to investigate, by such means as to them shall seem fit, the adequacy of all such works for such purposes as aforesaid, and to decide and certify, by a writing under their hands, or the hands of any two of them, the number, situation, and least possible dimensions as to breadth, depth, and height of the several openings of such bridges, culverts, tunnels, or other works connected with such portion of the railway as aforesaid, which shall be necessary for the passage of water, or for navigation under or across such railway; and it shall not be lawful for the company to proceed with the execution of any of the works connected with any portion of the railway without having first obtained such a certificate as aforesaid respecting such portion of the railway, under the hands of the said commissioners or any two of them, as aforesaid; nor shall the company be at liberty to deviate from such certificate in respect to such works, nor to execute the same otherwise than in conformity therewith, without the previous approbation in writing of the said commissioners.

Summary application to the Court of Chancery to enforce the execution of such works.

XXVII. It shall be lawful for the said commissioners to apply by petition in a summary way to the Court of Chancery, complaining of any omission on the part of the company to submit such plans, sections, and surveys to the said commissioners as aforesaid, or of the omission to construct any such bridge, culvert, tunnel, or other works

for the passage of water, in such manner as shall be so certified b the said commissioners, and thereupon it shall be lawful for the sai court to direct such works to be made or constructed by the compan in such manner as shall be conformable to the certificate of the sai commissioners, and to the said court shall seem necessary or prope and to make from time to time such further or other order for re straining the company or any other persons from proceeding wit any of the works connected with such portion of railway, except i conformity with the certificate of the said commissioners, and t issue any writ of injunction for the purpose aforesaid; and suc court shall have power to award costs to be paid by such compan or persons.

Saving of the powers of the drainage commissioners.

XXVIII. Nothing in this or the special act shall extend or b construed to prejudice or affect the powers or authorities of the com missioners acting in execution of the said act of the sixth year of he present Majesty, but all such powers shall be in full force as to th formation of any cut, river, or watercourse across the railway; bu such powers shall not be exercised so as to prevent or obstruct th working or using of the railway.

The drainage commissioners in Ireland to have power to decide questions as to the execution of works or to execute works for carrying watercourses across the railway.

XXIX. And whereas it is expedient to encourage the establish ment of manufactories to be worked by water power in Ireland; b it therefore enacted, That, whenever it may be requisite for the for mation of a watercourse for manufacturing purposes to construct a arch, culvert, tunnel, or watercourse beneath or an aqueduct abov any railway in Ireland, and that differences shall have arisen betwee the directors of such railway and the person interested in obtainin the water power, either as to the manner in which such works shal be executed, or the amount of compensation which should be paid it shall be lawful to refer the questions in issue to the commissioner acting under the said recited act of the fifth and sixth years of the reign of her Majesty Queen Victoria, and their decision thereon shall be final and conclusive; and if the said commissioners shall be of opinion that the proposed works can be executed without injury to the railway, and if they shall think proper so to do, they may un dertake the execution of so much of the said works as shall be in connexion with such railway, at the expense of the parties for whose benefit the watercourse shall be made, with the same powers and authorities as are given by the said act for the execution of any works for drainage.

Temporary Use of Lands.

And with respect to the temporary occupation of lands near the railway during the construction thereof, be it enacted as follows:—

Company may occupy temporarily private roads within five hundred yards of the railway.

XXX. Subject to the provisions herein and in the special act contained, it shall be lawful for the company, at any time before the expiration of the period by the special act limited for the completion of the railway, to enter upon and use any existing private road, being a road gravelled or formed with stones or other hard materials, and not being an avenue or a planted or ornamental road, or an approach to any mansion-house, within the prescribed limits, if any, or, if no limits be prescribed, not being more than five hundred yards distant from the centre of the railway as delineated on the plans; but, before the company shall enter upon or use any such existing road, they shall give three weeks' notice of their intention to the owners and occupiers of such road, and of the lands over which the same shall pass, and shall in such notice state the time during which, and the pur-

of not less height than four feet, and on each side of the immediate approaches of such bridge of not less than three feet;

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike road, and twenty-five feet if a public carriage road, and twelve feet if a private road;

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road, one foot in twenty feet if a public carriage road, and one foot in sixteen feet if a private carriage road, not being a tramroad, or railroad, or, if the same be a tramroad or railroad, the ascent shall not be greater than the prescribed rate of inclination, and, if no rate be prescribed, the same shall not be greater than as it existed at the passing of the special act.

The width of the bridges need not exceed the width of the road in certain cases.

LI. Provided always, That, in all cases where the average available width for the passage of carriages of any existing roads within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed for bridges over or under the railway, the width of such bridges need not be greater than such average available width of such roads, but so, nevertheless, that such bridges be not of less width, in the case of a turnpike road or public carriage road, than twenty feet: Provided also, that, if at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the company shall be bound, at their own expense, to increase the width of the said bridge to such extent as they may be required by the trustees or surveyors of such road, not exceeding the width of such road as so widened, or the maximum width herein or in the special act prescribed for a bridge in the like case over or under the railway.

Existing inclinations of roads crossed or diverted need not be improved.

LII. Provided also, That, if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same, or the inclination of such portion of any road as may require to be altered, or for which another road shall be substituted, shall be steeper than the inclination herein before required to be preserved by the company, then the company may carry any such road over or under the railway, or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed, or of the road so requiring to be altered, or for which another road shall be substituted.

Before roads interfered with, others to be substituted.

LIII. If, in the exercise of the powers by this or the special act granted, it be found necessary to cross, cut through, raise, sink, or use any part of any road, whether carriage road, horse road, tramroad, or railway, either public or private, so as to render it impassable for or dangerous or extraordinarily inconvenient to passengers or carriages, or to the persons entitled to the use thereof, the company shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expense maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as may be.

Penalty for not substituting a road.

LIV. If the company do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid, they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted; and such penalty shall be paid to the trustees, commissioners, surveyor, or other person having the management of

tained shall exempt the company from an action for nuisance or othe injury, if any, done, in the exercise of the powers hereinbefore given to the lands or habitations of any party other than the party whos lands shall be so taken or used for any of the purposes aforesaid: Pro vided also, that no stone or slate quarry, brick field, or other lik place, which, at the time of the passing of the special act, shall b commonly worked or used for getting materials therefrom for th purpose of selling or disposing of the same, shall be taken or used b the company, either wholly or in part, for any of the purposes lastl hereinbefore mentioned.

Company to give notice previous to such temporary possession.

XXXIII. In case any such lands shall be required for spoil bank or for side cuttings, or for obtaining materials for the construction o repair of the railway, the company shall, before entering thereon, (ex cept in the case of accident to the railway requiring immediate repara tion), give three weeks' notice in writing to the owners and occupier of such lands of their intention to enter upon the same for such pur poses; and in case the said lands are required for any of the othe purposes hereinbefore mentioned, the company shall (except in th cases aforesaid) give ten days' like notice thereof, and the compan shall, in such notices respectively, state the substance of the provision hereinafter contained respecting the right of such owner or occupie to require the company to purchase any such lands, or to receiv compensation for the temporary occupation thereof, as the case may be.

Service of notices on owners and occupiers of lands.

XXXIV. The said notice shall either be served personally on such owners and occupiers, or left at their last usual place of abode, if any such can, after diligent inquiry, be found, and in case any such owner shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Power to owner to object that other lands ought to be taken.

XXXV. In any case in which a notice of three weeks is herein-before required to be given, it shall be lawful for the owner or occupier of the lands therein referred to, within ten days after the service of such notice, by notice in writing to the company to object to the company making use of such lands, either on the ground that the lands proposed to be taken for the purposes aforesaid, or some part thereof, or of the materials contained therein, are essential to be retained by such owner, in order to the beneficial enjoyment of other neighbouring lands belonging to him, or on the ground that other lands lying contiguous or near to those proposed to be taken would be more fitting to be used for such purposes by the company; and upon objection being so made, such proceedings may be had as herein-after mentioned.

Power to two justices to order that the lands and materials shall not be taken.

XXXVI. If the objection so made be on the ground that the lands proposed to be taken, or some part thereof, or of the materials contained therein, are essential to be retained by the owner in order to the beneficial enjoyment of other neighbouring lands belonging to him, it shall be lawful for any justice, on the application of such owner, to summon the company to appear before two justices at a time and place to be named in the summons, such time not being later than the expiration of the said twenty-one days' notice; and on the appearance of the company, or, in their absence, upon proof of due service of the summons, it shall be lawful for such justices to inquire into the truth of such ground of objection; and if it appear to such

kept constantly closed across such road on both sides of the rai
except during the time when horses, cattle, carts, or carriages p
along the same shall have to cross such railway; and such gates
be of such dimensions and so constructed as when closed to fence
railway, and prevent cattle or horses passing along the road fro
tering upon the railway; and the person intrusted with the c
such gates shall cause the same to be closed as soon as such h
cattle, carts, or carriages shall have passed through the same, u
penalty of forty shillings for every default therein: Provided al
that it shall be lawful for the Board of Trade, in any case in
they are satisfied that it will be more conducive to the public
that the gates on any level crossing over any such road should be
closed across the railway, to order that such gates shall be k
closed, instead of across the road, and in such case such gates sh
kept constantly closed across the railway, except when engi
carriages passing along the railway shall have occasion to cross
road, in the same manner and under the like penalty as
directed with respect to the gates being kept closed acros
road.

As to crossing of turnpike roads adjoining stations.

XLVIII. Where the railway crosses any turnpike road on a
adjoining to a station, all trains on the railway shall be ma
slacken their speed before arriving at such turnpike road, and
not cross the same at any greater rate of speed than four mi
hour; and the company shall be subject to all such rules and r
tions with regard to such crossings as may from time to time be
by the Board of Trade.

Construction of bridges over roads.

XLIX. Every bridge to be erected for the purpose of carryi
railway over any road shall (except where otherwise provided b
special act) be built in conformity with the following regulat
(that is to say),

The width of the arch shall be such as to leave thereunder a
space of not less than thirty-five feet if the arch be over a
pike road, and of twenty-five feet if over a public carriage
and of twelve feet if over a private road;

The clear height of the arch from the surface of the road sha
be less than sixteen feet for a space of twelve feet if the ar
over a turnpike road, and fifteen feet for a space of ten f
over a public carriage road; and in each of such cases the
height at the springing of the arch shall not be less than t
feet;

The clear height of the arch for a space of nine feet shall n
less than fourteen feet over a private carriage road;

The descent made in the road in order to carry the same unde
bridge shall not be more than one foot in thirty feet if the b
be over a turnpike road, one foot in twenty feet if over a p
carriage road, and one foot in sixteen feet if over a privat
riage road, not being a tramroad or railroad, or, if the same
tramroad or railroad, the descent shall not be greater tha
prescribed rate of inclination, and, if no rate be prescribed
same shall not be greater than as it existed at the passing o
special act.

Construction of bridges over railway.

L. Every bridge erected for carrying any road over the rai
shall (except as otherwise provided by the special act) be built in
formity with the following regulations': (that is to say),

There shall be a good and sufficient fence on each side of the b

of not less height than four feet, and on each side of the immediate approaches of such bridge of not less than three feet;

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike road, and twenty-five feet if a public carriage road, and twelve feet if a private road;

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road, one foot in twenty feet if a public carriage road, and one foot in sixteen feet if a private carriage road, not being a tramroad, or railroad, or, if the same be a tramroad or railroad, the ascent shall not be greater than the prescribed rate of inclination, and, if no rate be prescribed, the same shall not be greater than as it existed at the passing of the special act.

The width of the bridges need not exceed the width of the road in certain cases.

LI. Provided always, That, in all cases where the average available width for the passage of carriages of any existing roads within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed for bridges over or under the railway, the width of such bridges need not be greater than such average available width of such roads, but so, nevertheless, that such bridges be not of less width, in the case of a turnpike road or public carriage road, than twenty feet: Provided also, that, if at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the company shall be bound, at their own expense, to increase the width of the said bridge to such extent as they may be required by the trustees or surveyors of such road, not exceeding the width of such road as so widened, or the maximum width herein or in the special act prescribed for a bridge in the like case over or under the railway.

Existing inclinations of roads crossed or diverted need not be improved.

LII. Provided also, That, if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same, or the inclination of such portion of any road as may require to be altered, or for which another road shall be substituted, shall be steeper than the inclination herein before required to be preserved by the company, then the company may carry any such road over or under the railway, or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed, or of the road so requiring to be altered, or for which another road shall be substituted.

Before roads interfered with, others to be substituted.

LIII. If, in the exercise of the powers by this or the special act granted, it be found necessary to cross, cut through, raise, sink, or use any part of any road, whether carriage road, horse road, tramroad, or railway, either public or private, so as to render it impassable for or dangerous or extraordinarily inconvenient to passengers or carriages, or to the persons entitled to the use thereof, the company shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expense maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as may be.

Penalty for not substituting a road.

LIV. If the company do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid, they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted; and such penalty shall be paid to the trustees, commissioners, surveyor, or other person having the management of

kept constantly closed across such road on both sides of the railway except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross such railway; and such gates shall be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway; and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same, under penalty of forty shillings for every default therein: Provided always that it shall be lawful for the Board of Trade, in any case in which they are satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway, to order that such gates shall be kept closed, instead of across the road, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road, in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

As to crossing of turnpike roads adjoining stations.

XLVIII. Where the railway crosses any turnpike road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such turnpike road, and shall not cross the same at any greater rate of speed than four miles an hour; and the company shall be subject to all such rules and regulations with regard to such crossings as may from time to time be made by the Board of Trade.

Construction of bridges over roads.

XLIX. Every bridge to be erected for the purpose of carrying the railway over any road shall (except where otherwise provided by the special act) be built in conformity with the following regulations (that is to say),

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty-five feet if the arch be over a turnpike road, and of twenty-five feet if over a public carriage road, and of twelve feet if over a private road;

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road, and fifteen feet for a space of ten feet if over a public carriage road; and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet;

The clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private carriage road;

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a turnpike road, one foot in twenty feet if over a public carriage road, and one foot in sixteen feet if over a private carriage road, not being a tramroad or railroad, or, if the same be a tramroad or railroad, the descent shall not be greater than the prescribed rate of inclination, and, if no rate be prescribed, the same shall not be greater than as it existed at the passing of the special act.

Construction of bridges over railway.

L. Every bridge erected for carrying any road over the railway shall (except as otherwise provided by the special act) be built in conformity with the following regulations: (that is to say),

There shall be a good and sufficient fence on each side of the bridge

…et, and on each side of the imme- …ge of not less than three feet; …have a clear space between the fences …f the road be a turnpike road, and …arriage road, and twelve feet if a pri-

…than one foot in thirty feet if the road …t in twenty feet if a public carriage …en feet if a private carriage road, not …d, or, if the same be a tramroad or rail- …be greater than the prescribed rate of …le be prescribed, the same shall not be …at the passing of the special act.

The width of the bridges need not exceed the width of the road in certain cases.

… in all cases where the average available …riages of any existing roads within fifty …g the same is less than the width herein- …over or under the railway, the width of …ater than such average available width of …ess, that such bridges be not of less width, …road or public carriage road, than twenty …if at any time after the construction of the …lable width of any such road shall be in- …of such bridge on either side thereof, the …at their own expense, to increase the width …extent as they may be required by the trus- …road, not exceeding the width of such road …ximum width herein or in the special act pre- …he like case over or under the railway.

Existing inclinations of roads crossed or diverted need not be improved.

… That, if the mesne inclination of any road …nd fifty yards of the point of crossing the same, …such portion of any road as may require to be …another road shall be substituted, shall be steeper …herein before required to be preserved by the …company may carry any such road over or under …y construct such altered or substituted road at an …per than the said mesne inclination of the road so …f the road so requiring to be altered, or for which …ll be substituted.

Before roads interfered with, others to be substituted.

…he exercise of the powers by this or the special act …und necessary to cross, cut through, raise, sink, or …any road, whether carriage road, horse road, tram- …, either public or private, so as to render it impassable …s or extraordinarily inconvenient to passengers or car- …he persons entitled to the use thereof, the company …e commencement of any such operations, cause a suffi- …e made instead of the road to be interfered with, and …wn expense maintain such substituted road in a state …or passengers and carriages as the road so interfered …rly so as may be.

Penalty for not substituting a road.

…company do not cause another sufficient road to be so …cy … with any … existing road as aforesaid, … … day during which such … existing road shall have … paid to the trustees, … the management of

such road, if a public road, and shall be applied for the purp
thereof, or, in case of a private road, the same shall be paid to
owner thereof, and every such penalty shall be recoverable, v
costs, by action in any of the superior courts.

Party suffering damage from interruption of road to recover in an action on the case.

LV. If any party, entitled to a right of way over any road so
terfered with by the company, shall suffer any special damage
reason that the company shall fail to cause another sufficient roa
be made before they interfere with the existing road, it shall be l
ful for such party to recover the amount of such special damage f
the company, with costs, by action on the case in any of the supe
courts, and that, whether any party shall have sued for such pen
as aforesaid or not, and without prejudice to the right of any part
sue for the same.

Period for restoration of roads interfered with.

LVI. If the road so interfered with can be restored compati
with the formation and use of the railway, the same shall be rest
to as good a condition as the same was in at the time when the s
was first interfered with by the company, or as near thereto as
be; and if such road cannot be restored compatibly with the for
tion and use of the railway, the company shall cause the new or s
stituted road, or some other sufficient substituted road, to be put i
a permanently substantial condition, equally convenient as the
mer road, or as near thereto as circumstances will allow; and
former road shall be restored, or the substituted road put into s
condition as aforesaid, as the case may be, within the following
riods after the first operation on the former road shall have b
commenced, unless the trustees or parties having the management
the road to be restored, by writing under their hands consent to
extension of the period, and, in such case, within such exten
period; (that is to say), if the road be a turnpike road, within
months, and, if the road be not a turnpike road, within twe
months.

Penalty for failing to restore road.

LVII. If any such road be not so restored, or the substituted ro
so completed, as aforesaid, within the periods herein or in the spec
act fixed for that purpose, the company shall forfeit to the truste
commissioners, surveyor, or other person having the management
the road interfered with by the company, if a public road, or, if
private road, to the owner thereof, five pounds for every day af
the expiration of such periods respectively during which such ro
shall not be so restored, or the substituted road completed; and
shall be lawful for the justices by whom any such penalty is impos
to order the whole, or any part thereof, to be laid out in executi
the work in respect whereof such penalty was incurred.

Company to repair roads used by them.

LVIII. If, in the course of making the railway, the company sh
use or interfere with any road, they shall from time to time mai
good all damage done by them to such road; and if any questi
shall arise as to the damage done to any such road by the compan
or as to the repair thereof by them, such question shall be referred
the determination of two justices; and such justices may direct su
repairs to be made in the state of such road, in respect of the dama
done by the company, and within such period as they think reaso
able, and may impose on the company, for not carrying into effe
such repairs, any penalty not exceeding five pounds per day, as
such justices shall seem just; and such penalty shall be paid to th
surveyor, or other person having the management of the road inte
fered with by the company, if a public road, and be applied for th

purposes of such road, or, if a private road, the same shall be paid to the owner thereof: Provided always, that, in determining any such question with regard to a turnpike road, the said justices shall have regard to and shall make full allowance for any tolls that may have been paid by the company on such road in the course of the using thereof.

Proceedings on application to justices to consent to level crossings of bridleways and footways.

LIX. When the company shall intend to apply for the consent of two justices, as hereinbefore provided, so as to authorize them to carry the railway across any highway other than a public carriage road on the level, they shall, fourteen days at least previous to the holding of the petty sessions at which such application is intended to be made, cause notice of such intended application to be given in some newspaper circulating in the county, and also to be affixed upon the door of the parish church of the parish in which such crossing is intended to be made, or, if there be no such church, some other place to which notices are usually affixed; and if it appear, to any two or more justices acting for the district in which such highway, at the proposed crossing thereof, is situate, and assembled in petty sessions, after such notice as aforesaid, that the railway can, consistently with a due regard to the public safety and convenience, be carried across such highway on the level, it shall be lawful for such justices to consent that the same may be so carried accordingly.

Appeal against the determination of the justices.

LX. If either party shall feel aggrieved by the determination of such justices upon any such application as aforesaid, it shall be lawful for such party, in like manner, and subject to the like conditions as are hereinafter provided in the case of appeals, in respect of penalties and forfeitures, to appeal to the quarter sessions of the county or place in which the cause of appeal shall have arisen; and it shall be lawful for the justices in such quarter sessions, upon the hearing of such appeal, either to confirm or quash the determination, or to make such other order in regard to the method of carrying the railway across such highway as aforesaid as to them shall seem fit, and to make such order concerning the costs both of the original application and of the appeal as to them shall seem reasonable.

Company to make sufficient approaches and fences to bridleways and footways crossing on the level.

LXI. If the railway shall cross any highway other than a public carriageway on the level, the company shall at their own expense make and at all times maintain convenient ascents and descents and other convenient approaches, with handrails or other fences, and shall, if such highway be a bridleway, erect and at all times maintain good and sufficient gates, and, if the same shall be a footway, good and sufficient gates or stiles, on each side of the railway where the highway shall communicate therewith.

Justices to have power to order approaches and fences to be made to highways crossing on the level.

LXII. If, where the railway shall cross any highway on the level, the company fail to make convenient ascents and descents or other convenient approaches, and such handrails, fence, gates, and stiles as they are hereinbefore required to make, it shall be lawful for two justices, on the application of the surveyor of roads, or of any two householders within the parish or district where such crossing shall be situate, after not less than ten days' notice to the company to order the company to make such ascent and descent or other approach, or such handrails, fences, gates, or stiles as aforesaid, within a period to be limited for that purpose by such justices; and, if the company fail to comply with such order, they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof

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Screens for Turnpike Roads.

to be applied, in such manner and by such person as they think
in executing the work in respect whereof such penalty was incurr

Screen for roads to be made, if required by the Board of Trade.

LXIII. If the commissioners or trustees of any turnpike road,
the surveyor of any highway, apprehend danger to the passengers
such road in consequence of horses being frightened by the sight
the engines or carriages travelling upon the railway, it shall be la
ful for such commissioners, or trustees, or surveyor, after giving fo
teen days' notice to the company, to apply to the Board of Tr
with respect thereto; and if it shall appear to the said Board t
such danger might be obviated or lessened by the construction of a
works in the nature of a screen near to or adjoining the side of s
road, it shall be lawful for them, if they shall think fit, to cert
the works necessary or proper to be executed by the company
the purpose of obviating or lessening such danger, and by such ce
ficate to require the company to execute such works within a c
tain time after the service of such certificate, to be appointed by
said board.

Penalty for failing to construct.

LXIV. Where, by any such certificate as aforesaid, the compa
shall have been required to execute any such work in the nature
a screen, they shall execute and complete the same within the per
appointed for that purpose in such certificate; and, if they fail so
do, they shall forfeit to the said commissioners, or trustees, or s
veyor, five pounds for every day during which such works shall
main uncompleted beyond the period so appointed for their comp
tion; and it shall be lawful for the justices by whom any such penal
is imposed to order the whole or any part thereof to be laid out
executing the work in respect whereof such penalty was incurred.

Construction of Bridges.

Justices to have power to order repair of bridges, &c.

LXV. Where, under the provisions of this or the special act,
any act incorporated therewith, the company are required to mainta
or keep in repair any bridge, fence, approach, gate, or other wo
executed by them, it shall be lawful for two justices, on the applic
tion of the surveyor of roads, or of any two householders of the pari
or district where such work may be situate, complaining that a
such work is out of repair, after not less than ten days' notice to t
company, to order the company to put such work into complete r
pair within a period to be limited for that purpose by such justice
and, if the company fail to comply with such order, they shall forfe
five pounds for every day that they fail so to do; and it shall be la
ful for the justices by whom any such penalty is imposed to ord
the whole or any part thereof to be applied, in such manner and b
such persons as they think fit, in putting such work into repair.

Board of Trade empowered to modify the construction of certain roads, bridges, &c., where a strict compliance with the act is impossible or inconvenient.

LXVI. And whereas expense might frequently be avoided, an
public convenience promoted, by a reference to the Board of Trad
upon the construction of public works of an engineering nature con
nected with the railway, where a strict compliance with the pro
visions of this or the special act might be impossible, or attende
with inconvenience to the company, and without adequate advan
tage to the public; be it enacted, That, in case any difference in re
gard to the construction, alteration, or restoration of any road o
bridge, or other public work of an engineering nature, required b
the provisions of this or the special act, shall arise between the com
pany and any trustees, commissioners, surveyors, or other person
having the control of or being authorized by law to enforce the con

struction of such road, bridge, or work, it shall be lawful for either party, after giving fourteen days' notice in writing of their intention so to do to the other party, to apply to the Board of Trade to decide upon the proper manner of constructing, altering, or restoring such road, bridge, or other work; and it shall be lawful for the Board of Trade, if they shall think fit, to decide the same accordingly, and to authorize, by certificate in writing, any arrangement or mode of construction in regard to any such road, bridge, or other work which shall appear to them either to be in substantial compliance with the provisions of this and the special act, or to be calculated to afford equal or greater accommodation to the public using such road, bridge, or other work; and after any such certificate shall have been given by the Board of Trade, the road, bridge, or other work therein mentioned shall be constructed by the company in conformity with the terms of such certificate, and, being so constructed, shall be deemed to be constructed in conformity with the provisions of this and the special act: Provided always, that no such certificate shall be granted by the Board of Trade unless they shall be satisfied that existing private rights or interests will not be injuriously affected thereby.

Authentication of certificates of the Board of Trade, service of notices, &c.

LXVII. And be it enacted, That all regulations, certificates, notices, and other documents in writing purporting to be made or issued by or by the authority of the Board of Trade, and signed by some officer appointed for that purpose by the Board of Trade, shall, for the purposes of this and the special act, and any act incorporated therewith, be deemed to have been so made and issued, and that without proof of the authority of the person signing the same, or of the signature thereto, which matters shall be presumed until the contrary be proved; and service of any such document, by leaving the same at one of the principal offices of the Railway Company, or by sending the same by post addressed to the secretary at such office, shall be deemed good service upon the company; and all notices and other documents required by this or the special act to be given to or laid before the Board of Trade shall be delivered at, or sent by post addressed to, the office of the Board of Trade in London.

Works for Protection and Accommodation of Lands.

And with respect to works for the accommodation of lands adjoining the railway, be it enacted as follows:—

LXVIII. The company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway: (that is to say),

Gates, bridges, &c.;

Such and so many convenient gates, bridges, arches, culverts, and passages over, under, or by the sides of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made; and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof;

fences;

Also sufficient posts, rails, hedges, ditches, mounds, or other fences for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, by reason of the railway, together with all necessary gates made to open towards such adjoining lands, and not towards the railway, and all necessary stiles; and such posts,

rails, and other fences shall be made forthwith after the
of any such lands, if the owners thereof shall so requi
the said other works as soon as conveniently may be;

drains; Also all necessary arches, tunnels, culverts, drains, or oth
sages, either over or under or by the sides of the railway,
dimensions as will be sufficient at all times to convey the
as clearly from the lands lying near or affected by the r
as before the making of the railway, or as nearly so as m
and such works shall be made from time to time as the r
works proceed;

watering-places. Also proper watering-places for cattle where, by reason of t
way, the cattle of any person occupying any lands lyin
thereto shall be deprived of access to their former w
places; and such watering-places shall be so made as t
all times as sufficiently supplied with water as theretofo
as if the railway had not been made, or as nearly so a
be; and the company shall make all necessary watercour
drains for the purpose of conveying water to the said w
places;

Provided always, that the company shall not be required to
such accommodation works in such a manner as would prev
obstruct the working or using of the railway, nor to make a
commodation works with respect to which the owners and oc
of the lands shall have agreed to receive and shall have bee
compensation instead of the making them.

Differences as to accommodation works to be settled by justices. LXIX. If any difference arise respecting the kind or number
such accommodation works, or the dimensions or sufficiency t
or respecting the maintaining thereof, the same shall be dete
by two justices; and such justices shall also appoint the time
which such works shall be commenced and executed by the co

Execution of works by owners on default by the company. LXX. If for fourteen days next after the time appointed b
justices for the commencement of any such works the compan
fail to commence such works, or, having commenced, shall fail
ceed diligently to execute the same in a sufficient manner, i
be lawful for the party aggrieved by such failure himself to e
such works or repairs; and the reasonable expenses thereof sh
repaid by the company to the party by whom the same shall s
been executed; and, if there be any dispute about such expens
same ahall be settled by two justices: Provided always, that n
owner or occupier or other person shall obstruct or injure th
way, or any of the works connected therewith, for a longer ti
use them in any other manner than is unavoidably necessary f
execution or repair of such accommodation works.

Power to owners of land to make additional accommodation works. LXXI. If any of the owners or occupiers of lands affected b
railway shall consider the accommodation works made by the
pany, or directed by such justices to be made by the compa
sufficient for the commodious use of their respective lands, i
be lawful for any such owner or occupier, at any time, at hi
expense, to make such further works for that purpose as h
think necessary, and as shall be agreed to by the company, or,
of difference, as shall be authorized by two justices.

Such works to be constructed under the superintendence of the company's engineer. LXXII. If the company so desire, all such last-mention
commodation works shall be constructed under the superinte
of their engineer, and according to plans and specifications to b
mitted to and approved by such engineer; nevertheless the co

shall not be entitled to require, either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by the company, or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by the company.

Accommodation works not to be required after five years.

LXXIII. The company shall not be compelled to make any further or additional accommodation works for the use of owners and occupiers of land adjoining the railway after the expiration of the prescribed period, or, if no period be prescribed, after five years from the completion of the works, and the opening of the railway for public use.

Owners to be allowed to cross until accommodation works are made.

LXXIV. Until the company shall have made the bridges or other proper communications which they shall, under the provisions herein, or in the special act, or any act incorporated therewith, contained, have been required to make between lands intersected by the railway, and no longer, the owners and occupiers of such lands, and any other persons whose right of way shall be affected by the want of such communication, and their respective servants, may at all times freely pass and repass, with carriages, horses and other animals, directly (but not otherwise) across the part of the railway made in or through their respective lands, solely for the purpose of occupying the same lands, or for the exercise of such right of way, and so as not to obstruct the passage along the railway, or to damage the same; nevertheless, if the owner or occupier of any such lands have in his arrangements with the company received or agreed to receive compensation for or on account of any such communications, instead of the same being formed, such owner or occupier, or those claiming under him, shall not be entitled so to cross the railway.

Penalty on persons omitting to fasten gates.

LXXV. If any person omit to shut and fasten any gate set up at either side of the railway, for the accommodation of the owners or occupiers of the adjoining lands, as soon as he, and the carriage, cattle or other animals, under his care, have passed through the same, he shall forfeit for every such offence any sum not exceeding forty shillings.

Branch Railways.

Power to parties to make private branch railways communicating with the railway.

LXXVI. And be it enacted, That this or the special act shall not prevent the owners or occupiers of lands adjoining to the railway, or any other persons, from laying down, either upon their own lands or upon the lands of other persons, with the consent of such persons, any collateral branches of railway to communicate with the railway, for the purpose of bringing carriages to or from or upon the railway, but under and subject to the provisions and restrictions of an act passed in the sixth year of the reign of her present Majesty, intituled "An Act for the better Regulation of Railways, and for the Conveyance of Troops;" and the company shall, if required, at the expense of such owners and occupiers and other persons, and subject also to the provisions of the said last-mentioned act, make openings in the rails, and such additional lines of rail as may be necessary for effecting such communication, in places where the communication can be made with safety to the public, and without injury to the railway, and without inconvenience to the traffic thereon; and the company shall not take any rate or toll or other monies for the passing of any passengers, goods, or other things, along any branch so to be made by any such owner or occupier or other person; but this enactment shall be subject to the following restrictions and conditions: (that is to say),

5 & 6 Vict. c. 55.

Restrictions and conditions.

No such branch railway shall run parallel to the railway;
The company shall not be bound to make any such openi any place which they shall have set apart for any specific pose with which such communication would interfere, nor any inclined plane or bridge, nor in any tunnel;
The persons making or using such branch railways shall b ject to all bye-laws and regulations of the company from t time made with respect to passing upon or crossing the ra and otherwise; and the persons making or using such b railways shall be bound to construct, and from time to ti need may require, to renew, the offset plates and switch cording to the most approved plan adopted by the compan under the direction of their engineer.

Working of Mines.

And with respect to mines lying under or near the railway, enacted as follows:—

Company not to be entitled to minerals.

LXXVII. The company shall not be entitled to any mines o ironstone, slate, or other minerals under any land purchased by except only such parts thereof as shall be necessary to be dug ried away or used in the construction of the works, unless th shall have been expressly purchased; and all such mines, exc as aforesaid, shall be deemed to be excepted out of the conveya such lands, unless they shall have been expressly named there conveyed thereby.

Mines lying near the railway not to be worked if the company willing to purchase them.

LXXVIII. If the owner, lessee, or occupier of any mines or rals lying under the railway, or any of the works connected with, or within the prescribed distance, or, where no distance s prescribed, forty yards therefrom, be desirous of working the such owner, lessee, or occupier shall give to the company not writing of his intention so to do thirty days before the comm ment of working; and upon the receipt of such notice it shall b ful for the company to cause such mines to be inspected by an son appointed by them for the purpose; and if it appear to th pany that the working of such mines or minerals is likely to d the works of the railway, and if the company be willing to compensation for such mines or any part thereof to such lessee, or occupier thereof, then he shall not work or get the and if the company, and such owner, lessee, or occupier, do no as to the amount of such compensation, the same shall be set in other cases of disputed compensation.

If company unwilling to purchase, owner may work the mines.

LXXIX. If before the expiration of such thirty days the co do not state their willingness to treat with such owner, lessee, cupier for the payment of such compensation, it shall be law him to work the said mines or any part thereof for which th pany shall not have agreed to pay compensation, so that the sa done in a manner proper and necessary for the beneficial w thereof, and according to the usual manner of working such m the district where the same shall be situate; and if any dam obstruction be occasioned to the railway or works by improper ing of such mines, the same shall be forthwith repaired or remo the case may require, and such damage made good, by the lessee, or occupier of such mines or minerals, and at his own ex and if such repair or removal be not forthwith done, or, if th pany shall so think fit, without waiting for the same to be d such owner, lessee, or occupier, it shall be lawful for the comp

execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby, by action in any of the superior courts.

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LXXX. If the working of any such mines under the railway or works, or within the above-mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall be lawful for the respective owners, lessees, and occupiers of such mines, and whose mines shall extend so as to lie on both sides of the railway, to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain, and work their said mines; but no such airway, headway, gateway, or water level shall be of greater dimensions or section than the prescribed dimensions and sections, and, where no dimensions shall be described, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the railway or works, or so as to injure the same, or to impede the passage thereon.

Mining communications.

Company to make compensation for injury done to mines;

LXXXI. The company shall from time to time pay to the owner, lessee, or occupier of any such mines extending so as to lie on both sides of the railway all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands lying over such mines by the railway, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and for any minerals not purchased by the company which cannot be obtained by reason of making and maintaining the railway; and if any dispute or question shall arise between the company and such owner, lessee, or occupier as aforesaid, touching the amount of such losses or expenses, the same shall be settled by arbitration.

and also for any airway or other work made necessary by the railway.

LXXXII. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid, (and not being the owner, lessee, or occupier of such mines), by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the company shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him.

Power to company to enter and inspect the working of mines.

LXXXIII. For better ascertaining whether any such mines are being worked or have been worked so as to damage the railway or works, it shall be lawful for the company, after giving twenty-four hours' notice in writing, to enter upon any lands through or near which the railway passes wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked or about so to be.

Penalty for refusal to inspect.

LXXXIV. If any such owner, lessee, or occupier of any such mine shall refuse to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works in manner

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The Railways' Clauses Consolidation Act.

aforesaid, every person so offending shall for every such refusa to the company a sum not exceeding twenty pounds.

If mines improperly worked, the company may require means to be adopted for the safety of the railway.

LXXXV. If it appear that any such mines have been work trary to the provisions of this or the special act, the company they think fit, give notice to the owner, lessee, or occupier th construct such works and to adopt such means as may be ne or proper for making safe the railway, and preventing injury t and if after such notice any such owner, lessee, or occupier forthwith proceed to construct the works necessary for maki the railway, the company may themselves construct such wor recover the expense thereof from such owner, lessee, or occu action in any of the superior courts.

Passengers and Goods on Railway.

And, with respect to the carrying of passengers and good the railway, and the tolls to be taken thereon, be it enacted lows:—

Company to employ locomotive power, carriages, &c.

LXXXVI. It shall be lawful for the company to use and locomotive engines or other moving power, and carriages and w to be drawn or propelled thereby, and to carry and convey up railway all such passengers and goods as shall be offered to th that purpose, and to make such reasonable charges in respect as they may from time to time determine upon, not exceedi tolls by the special act authorized to be taken by them.

Company empowered to contract with other companies.

LXXXVII. It shall be lawful for the company from time to enter into any contract with any other company, being the or lessees or in possession of any other railway, for the passa or along the railway by the special act authorized to be made engines, coaches, waggons, or other carriages of any other co or which shall pass over any other line of railway, or for the over any other line of railway of any engines, coaches, wagg other carriages of the company, or which shall pass over their railway, upon the payment of such tolls and under such con and restrictions as may be mutually agreed upon; and for the p aforesaid it shall be lawful for the respective parties to enter in contract for the division or apportionment of the tolls to be take their respective railways.

Contracts not to affect persons not parties thereto.

LXXXVIII. Provided always, That no such contract as af shall in any manner alter, affect, increase, or diminish any of th which the respective companies, parties to such contracts, sh the time being be respectively authorized and entitled to dem receive from any person or any other company, but that all persons and companies shall, notwithstanding any such contr entitled to the use and benefit of any of the said railways, up same terms and conditions, and on payment of the same tolls, would have been in case no such contract had been entered int

Company not to be liable to a greater extent than common carriers.

LXXXIX. Nothing in this or the special act contained sh tend to charge or make liable the company further or in any case than where, according to the laws of the realm, stage-coa prietors and common carriers would be liable, nor shall extend degree to deprive the company of any protection or privilege common carriers or stage-coach proprietors may be entitled to on the contrary, the company shall at all times be entitled to t nefit of every such protection and privilege.

Power to vary tolls.

XC. And, whereas, it is expedient that the company should

abled to vary the tolls upon the railway so as to accommodate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favouring particular parties, or for the purpose of collusively and unfairly creating a monopoly, either in the hands of the company or of particular parties; it shall be lawful, therefore, for the company, subject to the provisions and limitations herein and in the special act contained, from time to time to alter or vary the tolls by the special act authorized to be taken, either upon the whole or upon any particular portions of the railway, as they shall think fit: Provided that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton per mile or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made either directly or indirectly in favour of or against any particular company or person travelling upon or using the railway.

Tolls to be charged equally under like circumstances.

XCI. And, whereas, authority has been given by various acts of Parliament to railway companies to demand tolls for the conveyance of passengers and goods, and for other services, over the fraction of a mile equal to the toll which they are authorized to demand for one mile; therefore, in cases in which any railway shall be amalgamated with any other adjoining railway or railways, such tolls shall be calculated and imposed at such rates as if such amalgamated railways had originally formed one line of railway.

How tolls to be calculated where railways amalgamated.

XCII. It shall not be lawful for the company at any time to demand or take a greater amount of toll, or make any greater charge for the carriage of passengers or goods, than they are by this and the special act authorized to demand; and, upon payment of the tolls from time to time demandable, all companies and persons shall be entitled to use the railway, with engines and carriages properly constructed as by this and the special act directed, subject nevertheless to the provisions and restrictions of the said act of the sixth year of her present Majesty, intituled "An Act for the better Regulation of Railways, and for the Conveyance of Troops," and to the regulations to be from time to time made by the company by virtue of the powers in that behalf hereby and by the special act conferred upon them.

Railway to be free on payment of tolls.

5 & 6 Vict. c. 55.

XCIII. A list of all the tolls authorized by the special act to be taken, and which shall be exacted by the company, shall be published by the same being painted upon one toll-board or more in distinct black letters on a white ground, or white letters on a black ground, or by the same being printed in legible characters on paper affixed to such board, and by such board being exhibited in some conspicuous place on the stations or places where such tolls shall be made payable.

List of tolls to be exhibited on a board.

XCIV. The company shall cause the length of the railway to be measured, and milestones, posts, or other conspicuous objects to be set up and maintained along the whole line thereof, at the distance of one quarter of a mile from each other, with numbers or marks inscribed thereon denoting such distances.

Milestones.

XCV. No tolls shall be demanded or taken by the company for the use of the railway during any time at which the boards hereinbefore directed to be exhibited shall not be so exhibited, or at which the milestones hereinbefore directed to be set up and maintained shall not

Tolls to be taken only whilst board exhibited and milestones set up.

be so set up and maintained; and if any person wilfully pull deface, or destroy any such board or milestone, he shall forfeit not exceeding five pounds for every such offence.

Tolls to be paid as directed by the company.

XCVI. The tolls shall be paid to such persons, and at such upon or near to the railway, and in such manner and under s gulations, as the company shall, by notice to be annexed to t of tolls, appoint.

In default of payment of tolls, goods, &c. may be detained and sold.

XCVII. If, on demand, any person fail to pay the tolls due spect of any carriage or goods, it shall be lawful for the comp detain and sell such carriage, or all or any part of such goods the same shall have been removed from the premises of the con to detain and sell any other carriages or goods within such pr belonging to the party liable to pay such tolls, and out of the arising from such sale to retain the tolls payable as aforesaid, a charges and expenses of such detention and sale, rendering the plus, if any, of the monies arising by such sale, and such of th riages or goods as shall remain unsold, to the person entitled th or it shall be lawful for the company to recover any such to action at law.

Account of lading, &c. to be given.

XCVIII. Every person being the owner or having the care carriage or goods passing or being upon the railway shall, on de give to the collector of tolls, at the places where he attends f purpose of receiving goods or of collecting tolls for the part railway on which such carriage or goods may have travelled, about to travel, an exact account in writing, signed by him, number or quantity of goods conveyed by any such carriage, the point on the railway from which such carriage or goods ha out, or are about to set out, and at what point the same are int to be unloaded or taken off the railway; and if the goods con by any such carriage, or brought for conveyance as aforesai liable to the payment of different tolls, then such owner or person shall specify the respective numbers or quantities thereof to each or any of such tolls.

Penalty for not giving account of lading.

XCIX. If any such owner or other such person fail to give account, or to produce his way-bill or bill of lading, to such col or other officer or servant of the company demanding the sa if he give a false account, or if he unload or take off any part lading or goods at any other place than shall be mentioned in account, with intent to avoid the payment of any tolls paya respect thereof, he shall for every such offence forfeit to the con a sum not exceeding ten pounds for every ton of goods, or fo parcel not exceeding one hundred weight, and so in proporti any less quantity of goods than one ton, or for any parcel exce one hundred weight, (as the case may be), which shall be upo such carriage; and such penalty shall be in addition to the which such goods may be liable.

Disputes as to amount of tolls chargeable.

C. If any dispute arise concerning the amount of the toll to the company, or concerning the charges occasioned by ar tention or sale thereof under the provisions herein or in the s act contained, the same shall be settled by a justice; and it sh lawful for the company in the meanwhile to detain the goods, the case so require) the proceeds of the sale thereof.

Differences as to weights, &c.

CI. If any difference arise between any toll-collector or officer or servant of the company and any owner of or person h the charge of any carriage passing or being upon the railway,

any goods conveyed or to be conveyed by such carriage, respecting the weight, quantity, quality, or nature of such goods, such collector or other officer may lawfully detain such carriage or goods, and examine, weigh, gauge, or otherwise measure the same; and if, upon such measuring or examination, such goods appear to be of greater weight or quantity, or of other nature than shall have been stated in the account given thereof, then the person who shall have given such account shall pay, and the owner of such carriage, or the respective owners of such goods, shall also, at the option of the company, be liable to pay the costs of such measuring and examining; but, if such goods appear to be of the same or less weight or quantity than, and of the same nature as, shall have been stated in such account, then the company shall pay such costs, and they shall also pay to such owner of or person having charge of such carriage, and to the respective owners of such goods, such damage (if any) as shall appear to any justice, on a summary application to him for that purpose, to have arisen from such detention.

Toll-collector to be liable for wrongful detention of goods.

CII. If at any time it be made to appear to any justice, upon the complaint of the company, that any such detention, measuring, or examining of any carriage or goods, as hereinbefore mentioned, was without reasonable ground, or that it was vexatious on the part of such collector or other officer, then the collector or other officer shall himself pay the costs of such detention and measuring, and the damage occasioned thereby; and, in default of immediate payment of any such costs or damage, the same may be recovered by distress of the goods of such collector, and such justice shall issue his warrant accordingly.

Penalty on passengers practising frauds on the company.

CIII. If any person travel, or attempt to travel, in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare, and with intent to avoid payment thereof, or if any person, having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, or if any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage, every such person shall for every such offence forfeit to the company a sum not exceeding forty shillings.

Detention of offenders.

CIV. If any person be discovered, either in or after committing or attempting to commit any such offence as in the preceding enactment mentioned, all officers and servants and other persons on behalf of the company, or such other company or party as aforesaid, and all constables, gaolers, and peace officers, may lawfully apprehend and detain such person until he can conveniently be taken before some justice, or until he be otherwise discharged by due course of law.

Penalty for bringing dangerous goods on the railway.

CV. No person shall be entitled to carry, or to require the company to carry, upon the railway, any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any other goods which, in the judgment of the company, may be of a dangerous nature; and if any person send by the railway any such goods, without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the company with whom the same are left, at the time of so sending, he shall forfeit to the company twenty pounds for every such offence; and it shall be lawful for the company to refuse to

take any parcel that they may suspect to contain goods of a dan gerous nature, or require the same to be opened to ascertain the fact

Delivery of matters in possession or custody of toll-collector at removal.

CVI. If any collector of tolls, or other officer employed by th company, be discharged or suspended from his office, or die, abscon or absent himself, and if such collector or other officer, or the wif widow, or any of the family or representatives of any such collect or other officer, refuse or neglect, after seven days' notice in writin for that purpose, to deliver up to the company, or to any person ap pointed by them for that purpose, any station, dwelling-house, offic or other building, with its appurtenances, or any books, papers, other matters belonging to the company in the possession or custod of any such collector or officer at the occurrence of any such eve as aforesaid, then, upon application being made by the company any justice, it shall be lawful for such justice to order any co stable, with proper assistance, to enter upon such station or oth building, and to remove any person found therein, and to take po session thereof, and of any such books, papers, or other matters, an to deliver the same to the company, or any person appointed by the for that purpose.

Annual account to be made up, and a copy transmitted to the clerk of the peace, &c.

CVII. And be it enacted, That the company shall every ye cause an annual account in abstract to be prepared, shewing the tot receipts and expenditure of all funds levied by virtue of this or th special act for the year ending on the thirty-first day of Decembe or some other convenient day in each year, under the several distinc heads of receipt and expenditure, with a statement of the balanc of such account, duly audited and certified by the directors, or som of them, and by the auditors, and shall, if required, transmit a copy of the said account, free of charge, to the overseers of the poor o the several parishes through which the railway shall pass, and als to the clerks of the peace of the counties through which the railway shall pass, on or before the thirty-first day of January then next which last-mentioned account shall be open to the inspection o the public at all seasonable hours, on payment of the sum of one shilling for every such inspection: Provided always, that, if the said company shall omit to prepare or transmit such account as aforesaid, if required so to do by any such clerk of the peace or over seers of the poor, they shall forfeit for every such omission the sum of twenty pounds.

Bye-Laws.

And with respect to the regulating of the use of the railway, be it enacted as follows:—

Company to regulate the use of the railway.

CVIII. It shall be lawful for the company, from time to time, subject to the provisions and restrictions in this and the special act contained, to make regulations for the following purposes: (that is to say),

For regulating the mode by which, and the speed at which, carriages using the railway are to be moved or propelled;

For regulating the times of the arrival and departure of any such carriages;

For regulating the loading or unloading of such carriages, and the weights which they are respectively to carry;

For regulating the receipt and delivery of goods and other things which are to be conveyed upon such carriages;

For preventing the smoking of tobacco, and the commission of any other nuisance in or upon such carriages, or in any of the stations or premises occupied by the company;

And, generally, for regulating the travelling upon, or using and working of the railway:

But no such regulation shall authorise the closing of the railway, or prevent the passage of engines or carriages on the railway at reasonable times, except at any time, when, in consequence of any of the works being out of repair, or from any other sufficient cause, it shall be necessary to close the railway, or any part thereof.

Power to make regulations by bye laws.

CIX. For better enforcing the observance of all or any of such regulations, it shall be lawful for the company, subject to the provisions of an act passed in the fourth year of the reign of her present Majesty, intituled "An Act for regulating Railways," to make bye-laws, and from time to time to repeal or alter such bye-laws, and make others, provided that such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special act; and such bye-laws shall be reduced into writing, and shall have affixed thereto the common seal of the company; and any person offending against any such bye-law shall forfeit for every such offence any sum not exceeding five pounds, to be imposed by the company in such bye-laws as a penalty for any such offence; and if the infraction or non-observance of any such bye-law, or other such regulation as aforesaid, be attended with danger or annoyance to the public, or hindrance to the company in the lawful use of the railway, it shall be lawful for the company summarily to interfere to obviate or remove such danger, annoyance, or hindrance, and that without prejudice to any penalty incurred by the infraction of any such bye-law.

3 & 4 Vict. c. 97.

Publication of such bye-laws.

CX. The substance of such last-mentioned bye-laws, when confirmed or allowed according to the provisions of any act in force regulating the allowance or confirmation of the same, shall be painted on boards, or printed on paper and pasted on boards, and hung up and affixed and continued on the front or other conspicuous part of every wharf or station belonging to the company, according to the nature or subject-matter of such bye-laws respectively, and so as to give public notice thereof to the parties interested therein or affected thereby; and such boards shall from time to time be renewed, as often as the bye-laws thereon, or any part thereof, shall be obliterated or destroyed; and no penalty imposed by any such bye-law shall be recoverable, unless the same shall have been published and kept published in manner aforesaid.

Such bye-laws to be binding on all parties.

CXI. Such bye-laws, when so confirmed, published, and affixed, shall be binding upon, and be observed by, all parties, and shall be sufficient to justify all persons acting under the same; and, for proof of the publication of any such bye-laws, it shall be sufficient to prove that a printed paper or painted board, containing a copy of such bye-laws, was affixed and continued in manner by this act directed; and in case of its being afterwards displaced or damaged, then that such paper or board was replaced as soon as conveniently might be.

Leasing of Railway.

And with respect to leasing the railway, be it enacted as follows:—

Exercise of power to lease the railway.

CXII. Where the company shall be authorized by the special act to lease the railway, or any part thereof, to any company or person, the lease to be executed in pursuance of such authority shall contain all usual and proper covenants on the part of the lessee for maintaining the railway, or the portion thereof comprised in such lease,

in good and efficient repair and working condition during the co tinuance thereof, and for so leaving the same at the expiration the term thereby granted, and such other provisions, conditio covenants, and agreements as are usually inserted in leases of a li nature.

Powers vested in the company may be exercised by the lessees.

CXIII. Such lease shall entitle the company or person to wh the same shall be granted to the free use of the railway or portion railway comprised therein, and, during the continuance of any su lease, all the powers and privileges granted to, and which mig otherwise be exercised and enjoyed by, the company, or the direct thereof, or their officers, agents, or servants, by virtue of this or t special act, with regard to the possession, enjoyment, and manag ment of the railway, or of the part thereof comprised in such lea and the tolls to be taken thereon, shall be exercised and enjoyed b the lessee, and the officers and servants of such lessee, under t same regulations and restrictions as are by this or the special a imposed on the company, and their directors, officers, and servant and such lessee shall, with respect to the railway comprised in su lease, be subject to all the obligations by this or the special act in posed on the company.

Carriages and Engines.

And with respect to the engines and carriages to be brought on th railway, be it enacted as follows:—

Engines to consume their smoke.

CXIV. Every locomotive steam-engine to be used on the railwa shall, if it use coal or other similar fuel emitting smoke, be co structed on the principle of consuming, and so as to consume, its ow smoke; and if any engine be not so constructed, the company party using such engine shall forfeit five pounds for every da during which such engine shall be used on the railway.

Engines to be approved by the company, and certificate of approval given.

CXV. No locomotive or other engine, or other description moving power, shall at any time be brought upon, or used on, th railway, unless the same have first been approved of by the com pany; and within fourteen days after notice given to the compan by any party desirous of bringing any such engine on the railway the company shall cause their engineer or other agent to examin such engine at any place within three miles' distance from the rail way, to be appointed by the owner thereof, and to report thereon t the company; and within seven days after such report, if suc engine be proper to be used on the railway, the company shall giv a certificate to the party requiring the same of their approval of suc

Unfit engines to be removed.

engine; and if at any time the engineer or other agent of the com pany report that any engine used upon the railway is out of repair or unfit to be used upon the railway, the company may require th same to be taken off, or may forbid its use upon the railway until the same shall have been repaired to the satisfaction of the company and, upon the engine being so repaired, the company shall give a cer tificate to the party requiring the same of their approval of suc engine; and if any difference of opinion arise between the company and the owner of any such engine as to the fitness or unfitness thereof, for the purpose of being used on the railway, such difference shall be settled by arbitration.

Penalty for using improper engines.

CXVI. If any person, whether the owner or other person having the care thereof, bring or use upon the railway any locomotive or other engine, or any moving power, without having first obtained such certificate of approval as aforesaid, or if, after notice given by

the company to remove any such engine from the railway, such person do not forthwith remove the same, or if, after notice given by the company not to use any such engine on the railway, such person do so use such engine, without having first repaired the same to the satisfaction of the company, and obtained such certificate of approval, every such person shall, in any of the cases aforesaid, forfeit to the company a sum not exceeding twenty pounds; and in any such case it shall be lawful for the company to remove such engine from the railway.

Carriages to be constructed according to company's regulations.

CXVII. No carriage shall pass along, or be upon, the railway, (except in directly crossing the same, as herein or by the special act authorized), unless such carriage be at all times, so long as it shall be used or shall remain on the railway, of the construction and in the condition which the regulations of the company for the time being shall require; and if any dispute arise between the company and the owner of any such carriage as to the construction or condition thereof, in reference to the then existing regulations of the company, such dispute shall be settled by arbitration.

Regulations to apply also to company's carriages.

CXVIII. The regulations from time to time to be made by the company respecting the carriages to be used on the railway shall be drawn up in writing, and be authenticated by the common seal of the company, and shall be applicable alike to the carriages of the company and to the carriages of other companies or persons using the railway; and a copy of such regulations shall, on demand, be furnished by the secretary of the company to any person applying for the same.

Penalty for using improper carriages.

CXIX. If any carriage, not being of such construction or in such condition as the regulations of the company for the time being require, be made to pass or be upon any part of the railway, (except as aforesaid), the owner thereof, or any person having for the time being the charge of such carriage, shall forfeit to the company a sum not exceeding ten pounds for every such offence, and it shall be lawful for the company to remove any such carriage from the railway.

Owner's name, &c. to be registered, and exhibited on carriages.

CXX. The respective owners of carriages using the railway shall cause to be entered with the secretary or other officer of the company appointed for that purpose the names and places of abode of the owners of such carriages respectively, and the numbers, weights, and gauges of their respective carriages; and such owners shall also, if so required by the company, cause the same particulars to be painted in legible characters on some conspicuous part of the outside of every such carriage, so as to be always open to view; and every such owner shall, whenever required by the company, permit his carriage to be weighed, measured, or gauged at the expense of the company.

On non-compliance, carriage may be removed.

CXXI. If the owner of any carriage fail to comply with the requisitions contained in the preceding enactment, it shall be lawful for the company to refuse to allow such carriage to be brought upon the railway, or to remove the same therefrom until such compliance.

Carriages improperly loaded, or suffered to obstruct the road, may be unloaded or removed.

CXXII. If the loading of any carriage using the railway be such as to be liable to collision with other carriages properly loaded, or to be otherwise dangerous, or if the person having the care of any carriage or goods upon the railway suffer the same or any part thereof to remain on the railway so as to obstruct the passage or working

thereof, it shall be lawful for the company to cause such carriage goods to be unloaded and removed in any manner proper for preven ing such collision or obstruction, and to detain such carriage or good or any part thereof, until the expenses occasioned by such unloadin removal, or detention be paid.

Company not to be liable for damage by such unloading, &c.

CXXIII. The company shall not be liable for any damage or lo occasioned by any such unloading, removal, or detention as aforesa except for damage wilfully or negligently done to any carriage goods so unloaded, removed, or detained; nor shall they be liab for the safe custody of any such carriage or goods so detained, unle the same be wrongfully detained by them, and then only for so lo a time as the same shall have been so wrongfully detained.

Owners liable for damage by their servants.

CXXIV. The respective owners of engines and carriages passing being upon the railway, shall be answerable for any trespass or d mage done by their engines or carriages, or by any of the servants persons employed by them, to or upon the railway, or the machine or works belonging thereto, or to or upon the property of any oth person; and every such servant or other person may lawfully be co victed of such trespass or damage before any two justices of th peace, either by the confession of the party offending, or upon th oath of some credible witness; and upon such conviction every suc owner shall pay to the company, or to the person injured, as the ca may be, the damage to be ascertained by such justices, so that th same do not exceed fifty pounds.

Owners may recover from servants.

CXXV. It shall be lawful for any owner of an engine or carriag who shall pay the amount of any damage caused by the misfeasanc or negligence of any servant or other person employed by him to r cover the amount so paid by him from such servant or other perso by the same means as the company are enabled to recover the amoun of such damage from the owner of any engine or carriage.

Arbitration.

And with respect to the settlement of disputes by arbitration, be i enacted as follows:—

Where questions are to be determined by arbitration, the arbitrators to be appointed within fourteen days after notice.

CXXVI. When any dispute authorized or directed by this or th special act, or any act incorporated therewith, to be settled by arbi tration, shall have arisen, then, unless both parties shall concur i the appointment of a single arbitrator, each party, on the reques of the other party, shall nominate and appoint an arbitrator t whom such dispute shall be referred; and every appointment of s arbitrator shall be made on the part of the company, under the han of the secretary or any two of the directors of the company, and o the part of any other party under the hand of such party, or if such party be a corporation aggregate, under the common seal of such corporation, and such appointment shall be delivered to the arbi trators, and shall be deemed a submission to arbitration on the par of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power t revoke the same without the consent of the other, nor shall the death

In case of failure to appoint by one party the other may appoint.

of either party operate as a revocation; and if for the space of four teen days after any such dispute shall have arisen, and after a reques in writing, in which shall be stated the matters so required to be re ferred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fai to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint

such arbitrator to act on behalf of both parties; and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

Vacancy of arbitrator to be supplied.

CXXVII. If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable to act, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte;* and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or incapacity as aforesaid.

Appointment of umpire.

CXXVIII. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under this or the special act; and, if such umpire shall die or become incapable to act, they shall forthwith, after such death or incapacity, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Board of Trade empowered to appoint an umpire, on neglect of the arbitrators.

CXXIX. If, in either of the cases aforesaid, the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special act, shall be final.

In case of death of single arbitrator, the matter to begin de novo.

CXXX. If, where a single arbitrator shall have been appointed, such arbitrator shall die, or become incapable to act, before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special act, in the same manner as if such arbitrator had not been appointed.

If either arbitrator refuse to act, the other to proceed ex parte.

CXXXI. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse, or for seven days neglect, to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If arbitrators fail to make their award within twenty-one days, the matter to go to the umpire.

CXXXII. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators, under their hands, the matter referred to them shall be determined by the umpire to be appointed as aforesaid.

Power for arbitrators to call for books, &c.

CXXXIII. The said arbitrators, or their umpire, may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties, or their witnesses, on oath, and administer the oaths necessary for that purpose.

Arbitrator and umpire to make declaration.

CXXXIV. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall, in the presence

APPENDIX.

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The Railways' Clauses Consolidation Act.

of a justice, make and subscribe the following declaration: (that is to say),

"I, *A. B.*, do solemnly and sincerely declare, That I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the act [*naming the special act*]. "*A. B.*

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire, having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

Costs to be in the discretion of the arbitrators.

CXXXV. Except where, by this or the special act, or any act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration, to be determined by the arbitrator, shall be in the discretion of the arbitrators.

Submission to arbitration may be made a rule of court.

CXXXVI. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

The award not to be set aside for matter of form.

CXXXVII. No award made with respect to any question referred to arbitration under the provisions of this or the special act shall be set aside for irregularity or error in matter of form.

Service of notices upon company.

CXXXVIII. And be it enacted, That any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the company, may be served by the same being left at, or transmitted through the post directed to, the principal office of the company, or one of their principal offices, where there shall be more than one, or being given personally to the secretary, or, in case there be no secretary, then by being given to any one director of the company.

Tender of amends.

CXXXIX. And be it enacted, That, if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, or any act incorporated therewith, or by virtue of any power or authority thereby given; and if before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and, if no such tender shall have been made, it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Recovery of Damages and Penalties.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matters referred to justices, be it enacted as follows:—

Provision for damages not otherwise provided for.

CXL. In all cases where any damages, costs, or expenses are by this or the special act, or any act incorporated therewith, directed to be paid, and the method of ascertaining the amount, or enforcing the payment thereof, is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid, by the company or other party liable to pay the same, within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall

have been ordered to be paid, or either of them, or any other justice, on application, shall issue their or his warrant accordingly.

CXLI. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, and expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all cost and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Distress against the treasurer.

CXLII. Where, in this or the special act, any question of compensation, expenses, charges, or damages, or other matter, is referred to the determination of any one justice or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties, or any of them, and their witnesses, on oath; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Method of proceeding before justices in questions of damages, &c.

CXLIII. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special act, or by any bye-law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper, and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application, shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same, or any part thereof, is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Publication of penalties.

CXLIV. If any person pull down or injure any board put up or affixed as required by this or the special act for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalty for defacing boards used for such publication.

CXLV. Every penalty or forfeiture imposed by this or the special act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and, on complaint being made to any justice, he shall issue a summons requiring the party complained

Penalties to be summarily recovered before two justices.

against to appear before two justices at a time and place to be in such summons, and every such summons shall be served party offending, either in person or by leaving the same wit inmate at his usual place of abode; and upon the appearance party complained against, or, in his absence, after proof of the vice of such summons, it shall be lawful for any two justices ceed to the hearing of the complaint, and that although no infor in writing or in print shall have been exhibited before them upon proof of the offence, either by the confession of the part plained against, or upon the oath of one credible witness or shall be lawful for such justices to convict the offender, and such conviction, to adjudge the offender to pay the penalty feiture incurred, as well as such costs attending the conviction justices shall think fit.

Penalties to be levied by distress.

CXLVI. If forthwith, upon any such adjudication as afores amount of the penalty or forfeiture, and of such costs as afore not paid, the amount of such penalty and costs shall be levied tress, and such justices, or either of them, shall issue their or h rant of distress accordingly.

Imprisonment in default of distress.

CXLVII. It shall be lawful for any such justice to order fender so convicted as aforesaid to be detained and kept in sa tody until return can be conveniently made to the warrant of to be issued for levying such penalty or forfeiture and costs, the offender give sufficient security, by way of recognizance or wise, to the satisfaction of the justice, for his appearance bef on the day appointed for such return, such day not being mor eight days from the time of taking such security; but if, bef suing such warrant of distress, it shall appear to the justice, admission of the offender or otherwise, that no sufficient distr be had within the jurisdiction of such justice whereon to lev penalty or forfeiture and costs, he may, if he thinks fit, refrai issuing such warrant of distress; and in such case, or if such w shall have been issued, and upon the return thereof such insuffi as aforesaid shall be made to appear to the justice, then such shall, by warrant, cause such offender to be committed to gaol to remain without bail for any term not exceeding three m unless such penalty or forfeiture and costs be sooner pai satisfied.

Distress how to be levied.

CXLVIII. Where, in this or the special act, or any act porated therewith, any sum of money, whether in the nat penalty or otherwise, is directed to be levied by distress, such money shall be levied by distress and sale of the goods and cha the party liable to pay the same; and the overplus arising fro sale of such goods and chattels, after satisfying such sum of and the expenses of the distress and sale, shall be returned, mand, to the party whose goods shall have been distrained.

Distress not unlawful for want of form.

CXLIX. No distress levied by virtue of this or the special any act incorporated therewith, shall be deemed unlawful, no any party making the same be deemed a trespasser, on acco any defect or want of form in the summons, conviction, war distress, or other proceeding relating thereto, nor shall such pa deemed a trespasser *ab initio* on account of any irregularity after committed by him, but all persons aggrieved by such defect o gularity may recover full satisfaction for the special damage action upon the case.

CL. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish; or, if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or, if there shall not be any poor's rate therein, in aid of the poor's rate of any adjoining parish or district. Application of penalties.

CLI. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence. Penalties to be sued for within six months.

CLII. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special act, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly. Damage to be made good in addition to penalty.

CLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence. Penalty on witnesses making default.

CLIV. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special act, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any warrant or other authority than this or the special act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender. Transient offenders.

CLV. The justices before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule to this act annexed. Form of conviction.

CLVI. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts. Proceedings not to be quashed for want of form, &c.

CLVII. If any party shall feel aggrieved by any determinat
adjudication of any justice with respect to any penalty or for
under the provisions of this or the special act, or any act incorp
therewith, such party may appeal to the general quarter sessi
the county or place in which the cause of appeal shall have a
but no such appeal shall be entertained unless it be made
four months next after the making of such determination or a

Parties allowed to appeal to quarter sessions on giving security.

cation, nor unless ten days' notice in writing of such appeal,
the nature and grounds thereof, be given to the party against
the appeal shall be brought, nor unless the appellant forthwit
such notice enter into recognizances, with two sufficient su
before a justice, conditioned duly to prosecute such appeal,
abide the order of the court thereon.

Court to make such order as they think reasonable.

CLVIII. At the quarter sessions for which such notice sh
given, the Court shall proceed to hear and determine the ap
a summary way, or they may, if they think fit, adjourn it
following sessions; and upon the hearing of such appeal the
may, if they think fit, mitigate any penalty or forfeiture, o
may confirm or quash the adjudication, and order any mone
by the appellant, or levied by distress upon his goods, to be re
to him, and may also order such further satisfaction to be m
the party injured as they may judge reasonable; and they may
such order concerning the costs, both of the adjudication and
appeal, as they may think reasonable.

Receiver of metropolitan police district to receive penalties incurred within his district.

CLIX. Provided always, and be it enacted, That, notwithst
anything herein or in the special act, or any act incorporated
with, contained, every penalty or forfeiture imposed by this
special act, or any act incorporated therewith, or by any bye-
pursuance thereof, in respect of any offence which shall take
within the metropolitan police district, shall be recovered, en
accounted for, and, except where the application thereof is oth
specially provided for, shall be paid to the receiver of the Metro
Police District, and shall be applied in the same manner as pe
or forfeitures, other than fines upon drunken persons, or upo
stables for misconduct, or for assaults upon police constabl
directed to be recovered, enforced, accounted for, paid, and appl
an act passed in the third year of the reign of her present M
2 & 3 Vict. c. 71. intituled "An Act for regulating the Police Courts in th
tropolis;" and every order or conviction of any of the police
trates in respect of any such forfeiture or penalty shall be sub
the like appeal, and upon the same terms, as is provided in
of any order or conviction of any of the said police magistra
the said last-mentioned act; and every magistrate by who
order or conviction shall have been made shall have the same
of binding over the witnesses who shall have been examine
such witnesses shall be entitled to the same allowance of expe
he or they would have had or been entitled to in case the orde
viction, and appeal had been made in pursuance of the provis
the said last-mentioned act.

Persons giving false evidence liable to penalties of perjury.

CLX. And be it enacted, That every person who, upon a
amination upon oath, under the provisions of this or the speci
or any act incorporated therewith, shall wilfully and corruptl
false evidence, shall be liable to the penalties of wilful and c
perjury.

Money paid into

CLXI. And be it declared and enacted, That all sums of

which have been or shall be paid into the Bank of Ireland in the name and with the privity of the Accountant-General of the Court of Chancery of Ireland, under the provisions of an act passed in the second year of the reign of her present Majesty, intituled "An Act to provide for the Custody of certain Monies paid in pursuance of the Standing Orders of either House of Parliament by Subscribers to Works or Undertakings to be effected under the Authority of Parliament," shall and may be paid out and applied under any order of the said Court of Chancery exempt from ushers poundage.

the Bank of Ireland to be exempt from ushers poundage. 1 & 2 Vict. c. 117.

Access to Special Act.

And with respect to the provision to be made for affording access to the special act by all parties interested, be it enacted as follows:—

Copies of special act to be kept and deposited, and allowed to be inspected.

CLXII. The company shall, at all times after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act printed by the printers to her Majesty, or some of them; shall also, within the space of such six months, deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special act, so printed as aforesaid; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an act passed in the first year of the reign of her present Majesty, intituled "An Act to compel Clerks of the Peace for Counties, and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

7 W. 4 & 1 Vict. c. 83.

Penalty on company failing to keep or deposit such copies.

CLXIII. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Act not to extend to Scotland.

CLXIV. And be it enacted, That this act shall not extend to Scotland.

Act may be amended this session.

CLXV. And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of Parliament.

SCHEDULE REFERRED TO BY THE FOREGOING ACT.

to wit.

Be it remembered, that on the day of , in the year of our Lord *A. B.* is convicted before us, *C.*, *D.*, two of her Majesty's justices of the peace for the county of [*here describe the offence generally, and the time and place when and where committed*], contrary to the [*here name the special act*]. Given under our hands and seals the day and year first above written.

C.

D.

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8 & 9 VICT. CAP. 28.

An Act to empower Canal Companies and the Commissioners of Navig ble Rivers to vary their Tolls, Rates, and Charges on different Par of their Navigations. [30th June, 1845.]

Whereas by divers acts of Parliament various canal compani and the commissioners or trustees of several navigable rivers ha been authorised and empowered to levy and receive certain toll rates, and charges for the use of their respective canals and navig tions, which tolls, rates, and charges are for the most part requir to be levied at one uniform rate per ton or per mile throughout t entire length of the said navigations and rivers respectively, witho regard to any difference of circumstances which may exist in referen thereto: And whereas by an act of Parliament passed in this prese session, called "The Railways' Clauses Consolidation Act, 184 powers have been given to railway companies to vary the tolls, rat and charges upon railways, so as to accommodate them to the circu stances of the traffic thereon: And whereas greater competition t the public advantage would be obtained if canal companies and t commissioners or trustees of navigable rivers which have already be or may hereafter be from time to time incorporated or established, which are regulated under the authority of Parliament, were to ha the like powers granted to them in respect of their several canals a navigations and other works connected therewith; but such benefic purposes cannot be effected without the authority of Parliament: I it therefore enacted by the Queen's most excellent Majesty, by a with the advice and consent of the Lords spiritual and temporal, a Commons, in this present Parliament assembled, and by the auth ity of the same, That from and after the passing of this act, and subje to the provisions and limitations herein contained, it shall be lawf for the company of proprietors of any canal, or for the undertake commissioners, or trustees of any navigation or navigable river, a ready or hereafter to be established or incorporated or which is reg lated under the authority of Parliament, or for their respective lesse committees, directors, or managers, or their superintendents, or oth agents by them severally authorised, in such manner as may be r quired by their respective acts of incorporation or for regulating su canals or navigations, from time to time to alter or vary the tol rates, and duties granted to them, or by them respectively authori to be levied and received for the use of their several canals or navig tions, or any branches therefrom, or any railways or tramways co nected therewith, and made under the authority of such canal navigation acts respectively, either upon the whole or upon or for a particular portion or portions of such canals, navigations, branch railways, or tramways, according to local circumstances, or the qua tity of traffic or otherwise, as they shall think fit, and also from time time to lower or reduce, and again to raise or advance, such tolls, rat and duties, and also any tolls or charges by them respectively author ed to be levied and received for any haulage, trackage, or other pow supplied by them, either upon the whole or upon any particular p tion or portions of their said several canals, navigations, branch railways, and tramways, as to such companies, commissioners, tru

Canal companies authorised to vary their tolls or rates on different portions of their canals;

and also, from time to time, to reduce and again advance their tolls or rates.

tees, or lessees, or their committees, directors, managers, or superintendents respectively, shall seem fit, anything in the several acts of incorporation, or for regulating any such canals or navigations, contained to the contrary notwithstanding: Provided always, that in no case shall the tolls, rates, duties, and charges to be at any time levied or made by any such companies, commissioners, trustees, or lessees, for the use of any such canals, navigations, branches, railways, or tramways, or for the supply of any such haulage, trackage, or other power, exceed the amount which they are by their said several acts respectively authorised to levy or receive.

Tolls to be charged equally to all persons under the like circumstances.

II. Provided always, and be it enacted, That all tolls, rates, and duties for the use of any such canals, navigations, branches, railways, or tramways shall be at all times charged equally to all persons, and after the same rate, whether per mile, or per ton per mile, or otherwise, in respect of all boats, barges, and other vessels of a like description passing along or using the same portion of the said canal, navigation, branches, railways, or tramways respectively, and upon all goods, animals, articles, and things of a like description, and conveyed or propelled in a like boat, barge, or other vessel passing along or using the same portion of the said canal, navigation, branches, railways, or tramways, under the like circumstances; and that all tolls and charges for haulage or trackage or other power, to be supplied by any such company, commissioners, trustees, or lessees, shall be at all times charged equally to all persons, and after the same rate, whether per mile, or per ton per mile, or otherwise, in respect of all goods, animals, articles, and things of a like description, and conveyed in a like boat or vessel, drawn or propelled by a like power, and passing along or using the same portion of any such canal, navigation, branches, railways, or tramways, under the like circumstances; and no reduction or advance in any tolls or charges for the use of any such canal, navigation, branches, railways, or tramways, or for the supply of any haulage, trackage, or other power by the said companies, commissioners, trustees, or lessees, shall be made, either directly or indirectly, in favour of or against any particular company or person passing along or using the same portion of such canal, navigation, branches, railways, or tramways.

Act not to apply to existing companies until a meeting of shareholders have determined thereupon, nor in other cases until approved by trustees or proprietors, and notices thereof duly published.

III. Provided always, and be it enacted, That this act shall not apply to any canal or navigation the property wherein is vested in shareholders until a meeting of the shareholders thereof shall have been duly convened, in such manner as meetings are by their respective acts of incorporation or settlement required to be called, or are usually called, and it shall have been determined, by a majority of two thirds of the votes of the shareholders in such meeting assembled, either in person or by proxy (where by such acts of incorporation or settlement voting by proxy is allowed), to adopt the powers hereby granted, and where such navigations are vested in commissioners or trustees, without any body of shareholders or proprietors, until a special meeting of such commissioners or trustees shall have been duly convened in such manner as special meetings are by the respective acts for regulating such navigations required to be called, or are usually called, and it shall have been determined by a majority of such commissioners or trustees in such meeting assembled to adopt the powers by this act granted, or to any canal or navigation the property wherein is vested in one or more owner or owners, proprietor or proprietors, unless the owner or owners, proprietor or proprietors thereof shall determine to adopt the

powers and provisions hereby granted, nor in either case until notice of such determination and intention shall have been in the London Gazette in respect of canals or navigations in E or Wales, in the Edinburgh Gazette in respect of canals or tions in Scotland, and in the Dublin Gazette in respect of c navigations in Ireland, and in some newspaper circulating county or counties wherein such canal or navigation, or so thereof, shall pass, one month at the least previously to the of such powers, whereupon, or immediately after the expir such notice, every such company, and all such commissioner tees, or lessees, owners and proprietors, or their respective com directors, or managers, or their agents by them duly autho manner aforesaid, may from time to time put in force and the said powers or any of them in the manner by this act aut

Saving rights specifically reserved to canal companies and others by existing acts of Parliament.

IV. Provided always, and be it enacted, That nothing in contained shall be deemed or construed to deprive any canal gation company, or the commissioners, trustees, undertakers, prietors of any canal, river, or navigation, or the owners, le occupiers of any lands, collieries, quarries, or other hereditam joining or near to any of such canals or navigations, or the o or surveyors of the roads of any parish, township, or hamlet which any such canal or navigation may pass, of any powers, privileges, exemptions, or advantages specifically and expr cured to them by any existing act of Parliament: Provided a where by any canal or navigation act or acts now passed t rates, or duties (whether tolls per mile or tolls in gross) upon scription of goods, animals, articles, or things, or upon an barges, or other vessels which shall be navigated, carried, or c along any canal or navigation, or any portion thereof, and wh pass into, out of, or along any such canal or navigation, or a tion thereof, from, into, or along any other canal or navigatio or navigations, adjoining or communicating therewith, or any thereof, or from or to the junction or junctions with any such ing or communicating canal or navigation, canals or navigati or shall be specially fixed, determined, or limited, either abs or with reference to the tolls, rates, or duties to be levied or from time to time on goods, animals, articles, or things, boats, or other vessels passing into, out of, or along such canal or nav or any portion or portions thereof respectively, from, into, any other adjoining or communicating canal or navigation, c navigations, or from or to the junction or junctions with suc adjoining or communicating canal or navigation, canals or tions; or where in any such act or acts any special enactment vision shall have been inserted for securing a rateable redu advance of the respective tolls, rates, or duties to be levied or from time to time on goods, animals, articles, or things, boats, or other vessels, or on goods, animals, articles, or things of t description, passing over, along, into, or from any canal or nav or several and distinct portions of any canal or navigation, along two or more adjoining or communicating canals or navi or from or to the respective junctions of two or more adjoi communicating canals or navigations, no alteration or variatio tolls, rates, and duties so specially fixed, determined, or lim any or either of them, other than such alterations or variatio respectively authorised to be made under the several acts for

ing such canals or navigations, shall be made under the authority of this act without the previous consent in writing of the proprietors, trustees, undertakers or commissioners of the canal or navigation, or of all the several canals or navigations, who are expressly mentioned in such special enactments or provisions, or of the committee, directors, or managers of the company, trustees, undertakers, or commissioners, or respective companies, trustees, undertakers, or commissioners of such canal or navigation, canals or navigations, which consents such companies, trustees, undertakers, and commissioners, or their respective committees, directors, or managers, are hereby authorised to give, either under their common seals respectively, or under the hand of their respective clerks or secretaries, although any such companies, trustees, or undertakers so consenting may not have adopted the other powers of this act.

Canal companies subject to a limitation of profits not to raise their dues so as to exceed the maximum of profits.

V. Provided also, and be it enacted, That where in any canal or navigation act there shall have been inserted any special provision, which shall be still in force and unrepealed, whereby the amount of the annual dividends, interest, or profits to be shared or divided amongst the proprietors or shareholders of such canal or navigation shall have been limited not to exceed a certain percentage or amount, and the maximum of such percentage or amount shall have been attained at the time of the passing of this act, it shall not be lawful for the company of proprietors, trustees, or undertakers of any such canal or navigation to avail themselves of any of the powers of this act, for the purpose of raising or increasing the tonnage rates, tolls, or duties which on the 1st day of January immediately before the passing of this act were charged or levied upon any boats, barges, or other vessels carried upon or passing along such canal or navigation, or any part thereof.

Nothing herein to exempt any canal, &c. from any general act.

VI. And be it enacted, That nothing herein contained shall be construed to exempt any canal or navigation company who shall adopt the powers of this act from the operation of any general act regulating the manner of charging tolls and other charges upon canals and navigations in respect of passengers, goods, animals, articles, and things of a like description, which may be passed in the course of any future session of Parliament.

Act may be amended, &c.

VII. And be it enacted, That this act may be amended or repealed by any act to be passed in this present session of Parliament.

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8 & 9 VICT. CAP. 42.

An Act to enable Canal Companies to become Carriers of Goods upon their Canals. [21*st July*, 1845.]

Whereas by divers acts of Parliament railway companies have been empowered to convey upon their railways all such goods, wares, merchandize, articles, matters, and things, as may be offered to them for that purpose, and to make such reasonable charges for such conveyance as they may from time to time determine upon: And whereas greater competition for the public advantage would be obtained if similar powers were granted to canal and navigation companies which have from time to time been incorporated or established under the authority of Parliament; but such beneficial purpose cannot be effected without the authority of Parliament: Be it

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Enabling canal companies to carry goods on their canals, or canals communicating therewith.

therefore enacted by the Queen's most Excellent Majesty, with the advice and consent of the Lords spiritual and tempo Commons, in this present Parliament assembled, and by the ity of the same, That from and after the passing of this act be lawful for the company of proprietors, trustees, or the und of any canal, river, or navigation, or their respective com directors, or managers, or their superintendents or other a them duly authorised, to carry as common carriers for th profit upon their respective canals, rivers, or navigations, or u railways or tramways belonging thereto, and constructed u powers of their respective acts of Parliament, or upon an canals, rivers, or navigations communicating therewith, ei rectly or by means of any intermediate canal, river, or nav all such goods, wares, merchandize, articles, matters, and t may be intrusted to them for that purpose, and for the better them so to do, to purchase, hire, and construct, and to use ploy any number of boats, barges, vessels, rafts, carts, waggo riages, and other conveniences, and also to establish and furni haulage, trackage, or other means of drawing or propelling th either by steam, animal, or other power, or for the purpose of ing, carrying, conveying, warehousing, and delivering such wares, merchandize, articles, matters, and things, as to a company or undertakers shall seem fit, and to make such re charges for such conveyance, warehousing, collection, and del they may respectively from time to time determine upon, in to the several tolls or dues which any such company or und are now authorised to take for the use of their said canals, tions, or railways.

Company to be subject to the bye-laws of any other company upon whose canal they may act as carriers.

II. Provided always, and be it enacted, That any such co commissioners, trustees, or undertakers using or employi steam power for propelling by means of paddle-wheels, boats, vessels, or rafts, upon any canal, river, or navigation, (oth their respective canals, rivers, and navigations), shall use and the same, subject to such bye-laws, rules, and regulations t the construction, dimensions, power, rate of speed, and other such boats, barges, vessels, or rafts so propelled by steam said as the directors, commissioners, or undertakers of the rivers, and navigations respectively on which such last-me boats, barges, vessels, or rafts shall be used and employed s fit to make and publish in that behalf, and they are hereby ised and empowered to make and publish such bye-laws, ru regulations, and from time to time to add to or amend the need may require ; but it is hereby expressly provided and that any bye-laws, rules, and regulations so to be made and pu shall be made equally applicable to and binding on all co and persons so using such last-mentioned boats, barges, vessels.

Canal companies may provide boats and power for hauling and tracking vessels of other persons.

III. And be it enacted, That it shall also be lawful for a company, trustees, or undertakers, to purchase and provide boats and other vessels, and also horses, steam or other pow machinery, for hauling, tracking, and towing, upon their own rivers, or navigations, or upon any other canals, rivers, or tions communicating therewith, either directly or by means intermediate canal, river, or navigation, and to employ a s number of competent persons for those purposes, and to dem

receive for the use of such boats, and for such hauling, tracking, or towing, such reasonable hire or remuneration as shall be fixed by the respective committees, directors, or managers of such canals or navigations, or as shall be agreed upon between them and any person desiring the use of any such boats or vessels, or requiring such hauling, tracking, or towing.

Tolls, &c. to be charged equally to all persons.

IV. Provided always, and be it enacted, That all charges to be made by any such company for the carriage of any such goods, wares, merchandize, articles, or things, or for the use of their boats and other vessels, or for the supply of haulage, trackage, or other power, shall be at all times charged equally to all persons, and after the same rate, whether per mile, or per ton per mile, or otherwise, in respect of all goods, wares, merchandize, articles, and things of a like description, and conveyed or propelled in a like boat or vessel at the same rate of speed, and passing along the same portion of any such canal or navigation under the like circumstances, and no reduction or advance in any of such charges shall be made, either directly or indirectly, in favour of or against any particular company or person passing along or using, or sending goods, wares, merchandize, articles, or things along the same portion of any such canal or navigation under the like circumstances.

Company may sue and be sued as carriers, and may prefer indictments.

V. And be it enacted, That any canal or navigation company exercising the powers by this act granted shall have all the same powers and remedies for recovering any sum or sums of money which shall or may become due and owing to such company as carriers, or for the use of any boats or vessels, or for the supply of any haulage, trackage, or other power, by virtue of this act, as are given to them respectively by their said several acts of Parliament in reference to the tolls and duties thereby made payable, or they may, at their option, sue for and recover such charges, or any part thereof, in any of the superior courts; and such company may in like manner be sued for any loss sustained by any person or persons employing the said company as carriers, or for any neglect or misconduct of such company or their servants in respect of their conduct as carriers by virtue of this act; and such company may prosecute any indictment or other proceeding at law in respect of any offence arising or being committed in the course of such carrying or other proceeding under this act; and it shall be sufficient if any goods or other things which are set out in any indictment shall be described and laid to be the property of the said company.

Provisions in force relating to common carriers to apply to such companies.

VI. Provided always, and be it enacted, That nothing herein contained shall in any case extend to charge or make liable any such company further or in any other case than where, according to the laws of this realm for the time being, common carriers would be liable; nor shall anything herein contained extend to deprive such company of any protection or privilege which either now or at any time hereafter common carriers have or may be entitled to, but such company shall from time to time and at all times have and be entitled to the benefit of every such protection and privilege.

Companies empowered to contract with other canal companies.

VII. And whereas, in order to facilitate the conveyance of goods and merchandize and other matters and things in manner aforesaid, it is expedient that canal and navigation companies should be empowered to enter into arrangements with each other in the way that railway companies are authorised, so as to avoid the necessity for a change of boats and other delays arising from a diversity of interest;

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be it enacted, That, notwithstanding anything in this act or in an of the said acts for establishing or incorporating the said compani contained, it shall be lawful for any such canal or navigation com pany as aforesaid and they are hereby empowered from time to tim to make and enter into any contract or agreement with any oth canal or navigation company, or the commissioners or undertake thereof respectively, (and which contract or agreement such oth company is hereby authorised to enter into), either for the divisi or apportionment of tolls, dues, and charges, or for the passage ov or along their respective canals or navigations, or any branch thereof, or any railways or tramways connected therewith and b longing thereto as aforesaid, of any boats, barges, or other vessels, of any carriages or trucks drawn or propelled by steam, animal, other power, of or belonging to any other company, or which sh pass along any other line of canal, navigation, or railway, or for t passage over or along any other line of canal, navigation, or railw of any such boats, barges, or other vessels, carriages, or trucks draw or propelled as aforesaid, which shall belong to any such company, which shall pass along their line of canal, navigation, or railwa upon the payment of such tolls and duties, and under such conditio and restrictions, as may be deemed advisable, and may be mutual agreed upon, and also to enter into any other contract with any oth canal or navigation company that may be deemed advisable; and su such contract may contain such covenants, clauses, conditions, a agreements as the contracting parties may think advisable a mutually agree upon.

Canal companies empowered to lease their tolls.

VIII. And be it enacted, That it shall be lawful for any su canal or navigation company, from time to time, by lease, to tak effect in possession within six months from the letting thereof, to l the tolls and duties, or any part thereof, upon the whole or any pa of any such canal or navigation, or of any such railways or tra ways, to any other canal or navigation company, (and which lea such other canal or navigation company is hereby authorised t accept and enter into), for any period not exceeding twenty-on years from the commencement of any such lease: Provided alway that no such letting shall take place unless public notice of the in tention to let such tolls, or the part thereof intended to be let, sha have been given by the company proposing to let the same, by adve tisement, at least fourteen days prior to the meeting of the directo or managers at which it shall be intended to let such tolls.

Lessees to be deemed collectors.

IX. And be it enacted, That during the continuance of any suc lease the respective lessees named therein, and also all person appointed by them to collect the tolls so let, shall be deemed collec tors of the tolls so let, and they shall have the same powers to collec and recover such tolls, and be subject to the same rules, duties, an penalties in reference thereto, as if they had been appointed for tha purpose by the company demising the same.

Lessee making default to be removed.

X. And be it enacted, That if any such lease shall become void o voidable, according to any stipulations therein contained for tha purpose, by reason of the failure on the part of the lessee to comply with any of the terms of such lease, or if all or any part of the ren thereby reserved shall be in arrear or unpaid for twenty-one day after the same shall become payable, then, upon application made by the company who shall have demised the same, to a justice, it shall be lawful for such justice to order any constable, with proper assist-

e, to enter upon any toll-house, dwelling-house, office, weighing chine, or other building, with the appurtenances, belonging to the ors, and remove from the same the lessee or collector or other son found therein, together with his goods, and take possession reof and of all property found therein belonging to the lessors, l deliver the same to them or any person appointed by them for that pose.

Power to relet tolls.

I. And be it enacted, That upon such possession being obtained, hall be lawful for the company having made such demise to de- mine the lease (if any) previously subsisting, and the same shall ordingly be utterly void, except as to the remedies of the lessors payment of the rent due, or in respect of any unperformed or ken obligations or conditions on the lessee's part, all which reme- s shall remain in full force; and in every such case, either during h proceedings or on the termination thereof, the company may in let the tolls to the same or any other person, or cause them to collected in the same manner as if no such former lease had been le relative thereto.

Act not to apply to canals vested in shareholders, until approved of at a meeting, or in other cases by proprietors, and notices inserted in gazettes, &c.

II. Provided always, and be it enacted, That this act shall not ly to any canal or navigation the property wherein is vested in reholders, nor shall the powers of leasing hereinbefore contained xercised by any such canal or navigation company, until a meet- of the shareholders thereof shall have been duly convened in h manner as meetings are by their respective acts of incorporation settlement required to be called or are usually called, and it shall e been determined by a majority of two thirds of the votes of the reholders in such meeting assembled, either in person or by proxy, ere by such acts of incorporation or settlement voting by proxy is wed, to adopt the powers and provisions hereby granted, or such l so many of them as it shall at such meeting be determined shall adopted, or to grant or accept any such lease, nor to any canal or igation the property wherein is vested in one or more owner or ners, proprietor or proprietors, unless the owner or owners, pro- etor or proprietors thereof, shall determine to adopt the powers and visions hereby granted, nor in either case until public notice of any h determination and intention shall have been inserted in the ondon Gazette," in respect of canals or navigations in England or les, in the "Edinburgh Gazette," in respect of canals or naviga- s in Scotland, and in the "Dublin Gazette," in respect of canals navigations in Ireland, and in some newspaper circulating in the nty or counties wherein such canal or navigation, or some part reof, shall pass, one month at the least previously to the exercise ny such powers, whereupon, or immediately after the expiration uch notice, every such company, or their respective committees, ectors, or managers, or their agents by them duly authorised in ner aforesaid, may from time to time put in force and exercise the l powers or any of them, in the manner by this act authorised.

Act not to exempt canal companies from any general act.

III. And be it enacted, That nothing herein contained shall be strued to exempt any canal or navigation company who shall pt the powers of this act from the operation of any general act re- ting the manner of charging tolls and other charges upon canals navigations in respect of passengers, goods, animals, articles, and ngs of a like description, which may be passed in the course of any ure session of Parliament.

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Alteration of act.

XIV. And be it enacted, That this act may be amended or by any act to be passed in this present session of Parliament.

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8 & 9 VICT. CAP. 96.

An Act to restrict the Powers of selling or leasing Railways in certain Acts of Parliament relating to such Railways. [*4th August,*

Whereas provisions have been introduced in various acts of ment, during the present session of Parliament, relating to r giving to railway companies general powers of granting or a a lease, sale, or transfer of their own or other lines of railway is expedient that such powers should be restrained: Be it t enacted by the Queen's most excellent Majesty, by and with vice and consent of the Lords spiritual and temporal, and Co in this present Parliament assembled, and by the authorit

No railway company to grant or accept a lease or transfer of any railway, unless under a distinct provision of an act specifying the parties.

same, That it shall not be lawful for the company of propri any railway, by virtue of any powers contained in any act p the present session, to make or grant, or for any other railw pany or party, by virtue of any such powers, to accept, a sal or other transfer of any railway, unless under the authority tinct provision in some act of Parliament to that effect specif name the railway to be so leased, sold, or transferred, and th pany or party by whom such lease, sale, or transfer may be ively made, granted, or accepted.

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8 & 9 VICT. CAP. 113.

An Act to facilitate the Admission in Evidence of certain offic other Documents. [*8th August,* 1

Whereas it is provided by many statutes, that various cates, official and public documents, documents and proceed corporations and of joint-stock and other companies, and c copies of documents, bye-laws, entries in registers and other shall be receivable in evidence of certain particulars in courts tice, provided they be respectively authenticated in the mann scribed by such statutes: And whereas the beneficial effect o provisions has been found by experience to be greatly diminis the difficulty of proving that the said documents are genuine; is expedient to facilitate the admission in evidence of such a like documents: Be it therefore enacted by the Queen's most lent Majesty, by and with the advice and consent of the Lords tual and temporal, and Commons, in this present Parliament bled, and by the authority of the same, That whenever, by a

Certain documents to be re-

now in force, or hereafter to be in force, any certificate, offi

public document, or document or proceeding of any corporation or joint-stock or other company, or any certified copy of any document, bye-law, entry in any register or other book, or of any other proceeding, shall be receivable in evidence of any particular in any court of justice, or before any legal tribunal, or either House of Parliament, or any committee of either House, or in any judicial proceeding, the same shall respectively be admitted in evidence, provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone, as required, or impressed with a stamp and signed, as directed by the respective acts made, or to be hereafter made, without any proof of the seal or stamp, where a seal or stamp is necessary, or of the signature or of the official character of the person appearing to have signed the same, and without any further proof thereof in every case in which the original record could have been received in evidence.

Documents received in evidence without proof of seal or signature, &c. of person signing the same.

II. And be it enacted, That all courts, judges, justices, masters in Chancery, masters of courts, commissioners judicially acting, and other judicial officers shall henceforth take judicial notice of the signature of any of the equity or common-law judges of the superior courts at Westminster, provided such signature be attached or appended to any decree, order, certificate, or other judicial or official document.

Courts, &c. to take judicial notice of signature of equity or common-law judges, &c.

III. And be it enacted, That all copies of private and local and personal acts of Parliament not public acts, if purporting to be printed by the Queen's printers, and all copies of the journals of either House of Parliament, and of royal proclamations, purporting to be printed by the printers to the Crown, or by the printers to either House of Parliament, or by any or either of them, shall be admitted as evidence thereof by all courts, judges, justices, and others, without any proof being given that such copies were so printed.

Copies of private acts printed by Queen's printer, journals of Parliament, and proclamations, admissible as evidence.

IV. Provided always, and be it enacted, That, if any person shall forge the seal, stamp, or signature of any such certificate, official or public document, or document or proceeding of any corporation or joint-stock or other company, or of any certified copy of any document, bye-law, entry in any register or other book, or other proceeding as aforesaid, or shall tender in evidence any such certificate, official or public document, or document or proceeding of any corporation or joint-stock or other company, or any certified copy of any document, bye-law, entry in any register or other book, or of any other proceeding, with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit, whether such seal, stamp, or signature be those of, or relating to, any corporation or company already established, or to any corporation or company to be hereafter established, or if any person shall forge the signature of any such judge as aforesaid to any order, decree, certificate, or other judicial or official document, or shall tender in evidence any order, decree, certificate, or other judicial or official document with a false or counterfeit signature of any such judge as aforesaid thereto, knowing the same to be false or counterfeit, or if any person shall print any copy of any private act or of the journals of either House of Parliament, which copy shall falsely purport to have been printed by the printers to the Crown, or by the printers to either House of Parliament, or by any or either of them, or if any person shall tender in evidence any such copy, knowing that the same was not printed by the person or persons by whom it so purports to have been printed,

Persons forging seal, stamp, or signature of certain documents, or print any private act with false purport, guilty of felony.

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every such person shall be guilty of felony, and shall upon tion be liable to transportation for seven years, or to impri for any term not more than three nor less than one year, w labour: Provided also, that whenever any such document a mentioned shall have been received in evidence by virtue of the court, judge, commissioner, or other person officiating ju who shall have admitted the same, shall, on the request of a against whom the same is so received, be authorised, at its o own discretion, to direct that the same shall be impounded kept in the custody of some officer of the court or other pro son, until further order touching the same shall be giver by such court, or the court to which such Master or othe belonged, or by the persons or person who constituted suc or by some one of the equity or common-law judges of th rior courts at Westminster, on application being made purpose.

Not to extend to Scotland.

V. And be it enacted, That this act shall not extend land.

Alteration of act.

VI. And be it enacted, That this act may be repealed, al amended during this present session of Parliament.

Commencement of act.

VII. And be it enacted, That this act shall take effect f first day of November next after the passing thereof.

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9 & 10 VICT. CAP. 20.

An Act to amend an Act of the second Year of her present Maj providing for the Custody of certain Monies paid, in pursuan Standing Orders of either House of Parliament, by Subsc Works or Undertakings to be effected under the Authority of ment. [18*th June*,

Whereas an act was passed in the second year of the reig

1 & 2 Vict. c. 117.

present Majesty Queen Victoria, intituled "An Act to provid custody of certain monies paid, in pursuance of the standing either House of Parliament, by subscribers to works or unde to be effected under the authority of Parliament:" And whe expedient that the said act should be repealed, and should be re with such modifications, extensions, and alterations as after ed: Be it therefore enacted by the Queen's most excell jesty, by and with the advice and consent of the Lords spirit temporal, and Commons, in this present Parliament assembl by the authority of the same, that the said act shall be and

Recited act repealed.

by repealed: Provided always, that all acts done under the pr of the said act shall be good, valid, and effectual to all inte purposes, and that all sums of money paid under the provisio said act shall be dealt with in all respects as if this act had n passed.

Acts done and monies paid under former act.

Authority to deposit.

II. And be it enacted, That in all cases in which any sum o is required by any standing order of either House of Par either now in force or hereafter to be in force, to be deposited subscribers to any work or undertaking which is to be e

under the authority of an act of Parliament, if the director or person or directors or persons having the management of the affairs of such work or undertaking, not exceeding five in number, shall apply to one of the clerks in the office of the clerk of the Parliaments with respect to any such money required by any standing order of the Lords spiritual and temporal in Parliament assembled, or to one of the clerks of the private bill office of the House of Commons with respect to any such money required by any standing order of the Commons in Parliament assembled, to be deposited, it shall be lawful for the clerk so applied to, by warrant or order under his hand, to direct that such sum of money shall be paid in manner hereinafter mentioned; (that is to say), into the Bank of England, in the name and with the privity of the accountant-general of the Court of Chancery in England, if the work or undertaking in respect of which the sum of money is required to be deposited is intended to be executed in that part of the United Kingdom called England, or into any of the banks in Scotland established by act of Parliament or royal charter, in the name and with the privity of the Queen's Remembrancer of the Court of Exchequer in Scotland, at the option of the person or persons making such application as aforesaid, in case such work or undertaking is intended to be executed in that part of the United Kingdom called Scotland, or into the Bank of Ireland, in the name and with the privity of the Accountant-General of the Court of Chancery in Ireland, in case such work or undertaking is intended to be made or executed in that part of the United Kingdom called Ireland; and such warrant or order shall be a sufficient authority for the Accountant-General of the Court of Chancery in England, the Queen's Remembrancer of the Court of Exchequer in Scotland, and the Accountant-General of the Court of Chancery in Ireland, respectively, to permit the sum of money directed to be paid by such warrant or order to be placed to an account opened or to be opened in his name in the bank mentioned in such warrant or order.

Payment of deposit.

III. And be it enacted, That it shall be lawful for the person or persons named in such warrant or order, or the survivors or survivor of them, to pay the sum mentioned in such warrant or order into the bank mentioned in such warrant or order in the name and with the privity of the officer or person in whose name such sum shall be directed to be paid by such warrant or order, to be placed to his account there *ex parte* the work or undertaking mentioned in such warrant or order, pursuant to the method prescribed by any act or acts for the time being in force for regulating monies paid into the said courts, and pursuant to the general orders of the said courts respectively, and without fee or reward; and every such sum so paid in, or the securities in or upon which the same may be invested as hereinafter mentioned, or the stocks, funds, or securities authorised to be transferred or deposited in lieu thereof as hereinafter mentioned, shall there remain until the same, with all interest and dividends, if any, accrued thereon, shall be paid out of such bank, in pursuance of the provisions of this act: Provided always, that in case any such director or person, directors or persons, having the management of any such proposed work or undertaking as aforesaid, shall have previously invested in the Three per Centum Consolidated or the Three per Centum Reduced Bank Annuities, Exchequer bills or other Government securities, the sum or sums of money required by any such standing order of either House of Parliament as aforesaid to be deposited by the subscribers to

any work or undertaking which is to be executed under the au
of an act of Parliament, it shall be lawful for the person or
named in such warrant or order, or the survivors or survivor
to deposit such Exchequer bills or other Government securiti
bank mentioned in such warrant or order in the name and
privity of the officer or person in whose name such sum shall
warrant or order be directed to be paid, or to transfer such
ment stocks or funds into the name of the officer or person; a
transfer or deposit shall be directed by such clerk of the offic
clerk of the Parliaments, or such clerk of the private bill offic
House of Commons, as the case may be, in lieu of payme
much of the sum of money required to be deposited as aforesai
same Exchequer bills or other the Government stocks or fu
extend to satisfy at the price at which the same were original
chased by the said person or persons, director or directors as af
such price to be proved by production of the broker's certif
such original purchase.

Investment of deposit.

IV. And be it enacted, That if the person or persons named
warrant or order, or the survivors or survivor of them, desire
invested any sum so paid into the Bank of England or the
Ireland, or any interest or dividend which may have accrued
stocks or securities so transferred or deposited as aforesaid, t
in the name of whose accountant-general the same may ha
paid may, on a petition presented to such court in a summa
by him or them, order that such sum or such interest or di
shall, until the same be paid out to the parties entitled to t
in pursuance of this act, be laid out in the Three per Centum
dated or Three per Centum Reduced Bank Annuities, or any
ment security or securities, at the option of the aforesaid pe
persons, or the survivors or survivor of them.

Repayment of deposit.

V. And be it enacted, That on the termination of the se
Parliament in which the petition or bill for the purpose of ma
sanctioning any such work or undertaking shall have been int
into Parliament, or if such petition or bill shall be rejected or
withdrawn by some proceeding in either House of Parliament,
not be allowed to proceed, or if the person or persons by wh
said money was paid or security deposited shall have failed to
a petition, or if an act be passed authorising the making of suc
or undertaking, and if in any of the foregoing cases the perso
sons named in such warrant or order, or the survivors or sur
them, or the majority of such persons, apply by petition to t
in the name of whose accountant-general the sum of mone
tioned in such warrant or order shall have been paid, or such
quer bills, stocks, or funds shall have been deposited or transf
aforesaid, or to the Court of Exchequer in Scotland, in case su
of money shall have been paid in the name of the said Que
membrancer, the court in the name of whose accountant-ge
Queen's remembrancer such sum of money shall have been
such Exchequer bills, stocks, or funds shall have been depo
transferred, shall by order direct the sum of money paid in pu
of such warrant or order, or the stocks, funds, or securities in
which the same may have been invested, and the interest or di
thereof, or the Exchequer bills, stocks, or funds so deposited o
ferred as aforesaid, and the interest and dividends thereof, to be
transferred to the party or parties so applying, or to any other

or persons whom they may appoint in that behalf; but no such order shall be made in the case of any such petition or bill being rejected or not being allowed to proceed, or being withdrawn or not being presented, or of an act being passed authorising the making of such work or undertaking, unless upon the production of the certificate of the chairman of committees of the House of Lords with reference to any proceeding in the House of Lords, or of the speaker of the House of Commons with reference to any proceeding in the House of Commons, that the said petition or bill was rejected or not allowed to proceed, or was withdrawn during its passage through one of the Houses of Parliament, or was not presented, or that such act was passed, which certificate the said chairman or speaker shall grant on the application in writing of the person or persons, or the majority of the persons named in such warrant, or the survivor or survivors of them: Provided always, that the granting of any such certificate, or any mistake or error therein or in relation thereto, shall not make the chairman or speaker signing the same liable in respect of any monies, stocks, funds, and securities which may be paid, deposited, invested, or transferred in pursuance of the provisions of this act, or the interest or dividends thereof.

Granting certificate, &c. not to make the chairman or speaker signing the same liable.

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9 & 10 VICT. CAP. 28.

An Act to facilitate the Dissolution of certain Railway Companies.
[*3rd July*, 1846.]

Whereas it is expedient to facilitate the dissolution of certain railway companies as hereafter mentioned, and to afford facilities for the winding up the concerns of such companies: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That when any persons or companies, before the passing of this act, shall have entered into any contract usually called "a subscription contract," or any other agreement or agreements, in writing or otherwise, for the formation of a company or partnership for making any railway which cannot be carried into execution without obtaining the authority of Parliament, and in respect of which an act shall not, before the passing of this act, have been obtained, it shall be lawful for such persons or companies to dissolve the said company or partnership contract or agreement, in manner hereinafter mentioned, and that whether or not such contract or agreement shall contain any powers or provisions for dissolution of the company or partnership intended to be thereby formed: Provided nevertheless, that nothing herein contained shall prevent any such persons or companies from exercising any such power or provision for dissolution in their contract or agreement contained, if they shall see fit at any time before availing themselves of the powers in this act contained: Provided also, that the provisions of this act shall be taken to apply to any contract or partnership for the making any railway, notwithstanding that the agreement or partnership may relate to any other objects in connexion therewith; and (unless a separate capital and separate

Persons who shall have entered into a contract for the formation of a company for making a railway, &c. may dissolve the same pursuant to this act.

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subscription shall exist as regards the different objects) then, on dissolution under the provisions of this act, the dissolution shall e tend to the whole objects of the contract or partnership.

Committee, &c. may call meetings of shareholders to consider dissolution.

II. And be it enacted, That it shall be lawful for the committe provisional directors, or other persons by such contract or agreeme as aforesaid entrusted with the management and carrying into effe of the undertaking, and who are hereinafter called "the committee to call a meeting of the shareholders for the purpose of determini whether the partnership or company so as aforesaid intended to formed (and which is hereinafter called "the company") shall dissolved; and that if such meeting shall determine, as after me tioned, that the company shall be dissolved, then, as from the date the resolution come to at such meeting, the company shall be tak to be dissolved, and the committee shall not have power to proce any further with the undertaking.

Shareholders may require committee to call meeting, and in default may call it themselves.

III. And be it enacted, That it shall be lawful for any five sha holders, as after defined, by writing under their hands, to require t committee to call a meeting for the purpose aforesaid; and that the committee shall refuse or neglect, for six days after any such r quisition shall have been left at the registered place of business of t company, as regards England and Ireland, and as regards Scotla at the usual place of business, or shall have been served personally any member of the committee, to call such meeting by notice as af mentioned, or if, for any reason whatever, such meeting shall not convened and held in pursuance of the directions herein contained, shall be lawful for any five shareholders to call such meeting; a after any such requisition shall have been left or served as aforesa it shall not be lawful for the committee, or any of them, to make a payments out of the monies of such company, except in discharge bonâ fide debts or liabilities, or in performance of contracts or enga ments previously entered into, and in payment of the expenses calling and holding such meeting, or any adjourned meeting, nor enter into any contracts or engagements on behalf of the company affecting the property thereof, nor to issue any shares or scrip of representing the capital stock of such company, until the meeti called as aforesaid shall have determined the question of dissolutio

Meeting to be held duly called, although certain votes may be disallowed.

IV. And be it enacted, That the meeting shall be held to ha been duly called, although the votes of the parties calling the sa or any of such votes, shall be disallowed at the meeting by the scr tineers to be appointed as hereinafter mentioned.

Notice of meeting to be by advertisement.

V. And be it enacted, That the calling of any such meeting sh be by notice, signed either on behalf of the committee by any member of the same, or, in case the meeting shall be called by t shareholders, then by the shareholders calling the same, such noti to be advertised in the London Gazette eight clear days, and n more than fifteen days before the time to be therein fixed for holdin such meeting, and also, within the before-mentioned limits as t time, in three London daily newspapers; that, in the case of rai ways to be made in Ireland, the said notice shall also be adver tised, within the before-mentioned limits as to time, in the Du lin Gazette and in two newspapers in common circulation in th city of Dublin; and as to railways to be made in Scotland, the sa notice shall also be advertised, within the before-mentioned limits a to time, in the Edinburgh Gazette and in two newspapers in comm circulation in the city of Edinburgh.

VI. And be it enacted, That every notice of meeting shall specify the day, hour, place, and purpose of meeting; and the parties entitled to be present at such meeting shall be the persons producing the shares, scrip, or receipts hereinafter defined, or the proxies after mentioned.

Notices to specify the day, hour, &c. of meeting.

VII. And be it enacted, That every meeting so called shall elect a chairman within one hour of the time appointed for holding such meeting, and that the person to be in the chair at every such meeting shall be some member of the committee, to be elected by a majority of the members of the committee present at the meeting, and, in case the votes of the members of the committee present shall be equally divided, or if, from any cause, there shall be no member of the committee so elected, then some shareholder entitled to vote shall be elected by the meeting; and every person present, either in respect of shares or of a proxy, shall have one vote only for the election of the chairman and scrutineers; and every chairman shall have a casting vote, in addition to any other vote which he may be entitled to; and if any such chairman shall refuse to give his casting vote on the question of dissolution or bankruptcy, as after mentioned, the question shall be considered as carried in the affirmative for dissolution or bankruptcy.

Chairman to be elected by a majority of committee, if present.

Chairman to have a casting vote.

VIII. And be it enacted, That the chairman, at every such meeting, shall be bound to put to the meeting any question proposed for the dissolution of the company, or as to the bankruptcy thereof, and also as to the election of scrutineers, and that no business shall be transacted at any such meeting other than the consideration of any such question so proposed, and the election of a chairman and scrutineers.

Chairman bound to put questions proposed, and no other business to be transacted.

IX. And be it enacted, That, immediately after the election of a chairman, the meeting shall proceed to elect, as scrutineers, three shareholders in the company, whose business it shall be to verify as after mentioned, and take the votes of the shareholders entitled to vote, and cast up and declare the same; and the decision, in writing, of them, or of any two of them, shall be final in all respects.

Three scrutineers to be elected.

X. And be it enacted, That in case it shall be discovered by, or shewn to, the scrutineers, that the chairman at any meeting is not entitled to vote as a shareholder, it shall be lawful for the meeting either to elect a new chairman or to maintain such existing chairman, but such chairman so maintained in office shall not thereby acquire the right of voting as a shareholder, or of giving a casting vote; and, in case the votes shall be equally divided, the resolutions shall be considered as carried in the affirmative for the dissolution and as to the bankruptcy of the company: Provided always, that all votes, acts, and deeds by any chairman not entitled to vote, or by the meeting presided over by him, given or done before the discovery of his not being so entitled, or given afterwards if he be so maintained, shall be valid and effectual; and, as regards the election of chairman and scrutineers by the votes of the parties present, and producing scrip or proxies, no objection after the election shall be made on its being shewn that they were not entitled to be present.

Case of the chairman not being entitled to vote.

XI. And be it enacted, That at any such meeting as aforesaid, in the event of the prescribed quorum after mentioned not being present and voting at such meeting, then the chairman shall cause the votes of the persons constituting the said meeting to be taken and re-

In the event of a quorum not being present at such meetings, the same to be adjourned

of persons present at original and adjourned meetings to be received as if given at one and the same meeting.

corded, and shall then adjourn the same to be held at the sam and at a day to be declared by the chairman, such day not be than three days, and not more than one week from the origi of meeting, such day and the time of meeting in the meant regards any meeting held in any part of England, being ad twice in each of the three London daily newspapers, and in t of a meeting held at Edinburgh twice in two Edinburgh papers, and in the case of a meeting held in Dublin twice Dublin newspapers; and at such adjourned meeting the v such persons constituting the same as had not voted at the meeting shall be taken and recorded, and the total amount given at the original and adjourned meeting shall be receiv given at one and the same meeting.

As to the right of parties entitled to vote at meetings of the shareholders.

XII. And be it enacted, That the only persons entitled to sent and vote at any such meeting as shareholders, by the or proxies, shall be those persons who shall for the time b in possession of and produce certificates or receipts declaring entitled to shares in any company, or acknowledging the re a deposit in such company usually termed "scrip" or "re for deposits on shares, and that notwithstanding the party in sion may not be the party to whom the same was originally g or that the same may not have been legally assigned to th in possession, or notwithstanding the same may be possessed holder as a mere mortgagee, or in any other manner, or th may be subject to any charge or lien, and which parties are act called "shareholders;" provided that nothing herein co shall authorise more than one vote, either for dissolution or ruptcy, to be given in respect of the same share, notwithstandi transfer or delivery of such share after a vote shall have bee in respect thereof.

Scale of voting.

XIII. And be it enacted, That every shareholder shall, in on the questions of dissolution and bankruptcy, be entitled vote, by himself or proxy, in respect of every share held by h in respect of which scrip or receipts may have been issued or d paid, and that all shareholders producing such shares, scrip, ceipts shall be entitled to attend meetings and to appoint prox cording to the form contained in the schedule hereunto anne in some form to the like effect: Provided always, and be it e that the fact of any such party attending any such meeting sh in anywise increase or alter, either in law or equity, his rights bilities.

Proxies shall be signed before a Master in Chancery in England, or sheriff, &c. in Scotland.

XIV. And be it enacted, That the appointment of any such shall be signed by the party appointing the same before a Ma Master Extraordinary of the Court of Chancery in England land, or a justice of the peace in England or Ireland, or b sheriff or sheriff substitute or justice of the peace in Scotla where such shares, scrip, or certificate shall be in possession parties beyond seas, the said proxy shall be signed as aforesaid any of her Majesty's consuls or vice-consuls or a notary publi that, on signing the same, the share, scrip, or receipt in res which the proxy is intended to be appointed shall be produ the Master, justice, sheriff, sheriff substitute, consul, vice-con notary public; and the number of the shares, or the num shares referred to in such scrip or receipt, and the name of th pany, shall be ascertained and verified, with the number and n

the company stated in the appointment of proxy, before such Master, sheriff, sheriff substitute, justice, consul, vice-consul, or notary public.

Number of persons, &c. necessary to constitute a meeting.

XV. And be it enacted, That to constitute a meeting under the provisions of this act for the purpose of deciding on a dissolution or bankruptcy, persons representing at least one third part of the shares in the undertaking actually issued or given, either as shares, scrip, or receipts, must be present and vote; and that for the purpose of effecting a dissolution, and as to bankruptcy, there must be either a majority of the votes of the whole scrip of the company issued as aforesaid, or at least three fifths of the votes of persons present and voting, either as shareholders or proxies, in favour of the motion for dissolution, and for the bankruptcy, if so resolved on.

Majority must consist of at least three fifths of the votes of persons present.

Minutes of proceedings to be advertised.

XVI. And be it enacted, That the chairman at every such meeting shall sign a minute of the proceedings, and that every minute so signed shall be advertised within the shortest possible time in the same papers as those in which notice of the original meeting is hereinbefore required to be given; and a copy of the London Gazette containing the advertisement of such minute shall be evidence of the meeting having been duly called and held, and of the resolutions recorded having been duly passed by the majorities therein mentioned; and such minutes shall be countersigned by at least two of the three scrutineers aforesaid; and that any party signing minutes false or incomplete in any material particular, or any person who shall insert or cause to be inserted in the London Gazette any advertisement under the present clause, knowing the same to be false in any material particular, shall be guilty of a misdemeanor; and the minute directed to be advertised shall also be registered with the registrar of joint-stock companies, without any fee being chargeable for such registration.

London Gazette to be evidence.

Penalty on signing false minutes, &c.

Places of meetings shall be held as specified in notice.

XVII. And be it enacted, That as regards all projected railways as aforesaid any portion of the intended line of which is situate in England or Wales, the meeting aforesaid may be held, as shall be specified in the notice calling the same, either in London or Westminster, or at the registered place of business of the company; or as regards any railways any portion of the intended line of which is situate in the counties of Lancaster or Chester, such meeting may be held at Manchester or Liverpool, notwithstanding that the registered place of business may not be at either of such places; or as regards any railways any portion of the intended line of which is situate in the county of York, such meetings may be held at York or Leeds, notwithstanding that the registered place of business may not be at either of such places; that as regards railways situate in Ireland, the meetings may be held either in London or Dublin, or at the registered places of business, as shall be specified in the notice; and that as regards railways situate in Scotland, the meetings may be held either in London or Edinburgh, or at the usual places of business, as shall be specified in the notice.

No votes allowed except for scrip, &c. actually issued or given before 31st March, 1846.

XVIII. And be it enacted, That no parties shall be entitled to vote except in respect of scrip, receipts, or shares actually issued or given before the thirty-first day of March, One thousand eight hundred and forty-six, and that the shares, scrip, or receipts actually issued or given shall for the purposes of this act be taken to constitute the whole number of shares in the undertaking, although the contract may have provided that the undertaking shall consist of a greater number; and

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Mode of ascertaining the issues.

that for the purpose of ascertaining
receipts actually issued or given, th
railway company to which the powe
in regard to railways to be made i
days after the passing of this act, be
trar of joint-stock companies a retur
any member of such committee speci
or receipts actually issued or given a
share, and of the deposit paid or to b
such return shall not be so sent in w
member of the committee shall forf
pounds, to be recovered in like mann
7 & 8 Vict. c. 110. intituled "An Act for the Registrat
tion of Joint-stock Companies," is re

Registrars of joint-stock companies to require return of issues, but omission of registrar to send notice not to exempt committee from penalties.

XIX. And be it enacted, That the r
shall, within six days from the passi
tered place of business of every such
der his hand requiring such return t
send any such notice by the registrar
of any such company from the pen
son shall be at liberty to inspect an
under this act on payment of a fee of
the certificate of the said registrar, u
total amount of the shares, scrip, or
the amount specified in such return,
two shillings and sixpence shall be p
meeting shall be invalidated by reas
return, but any party making such r
be guilty of a misdemeanor.

Committees of projected railways in Scotland to lodge a return with the sheriff clerk of Edinburgh within twelve days from passing of this act.

XX. And be it enacted, That in r
railways to be made in Scotland the c
to which the powers given by this act
after the passing of this act, be boun
of the shire of Edinburgh a return
quorum of such committee, or of ev
the number of shares, scrip, or recei
aforesaid, the amount of each share,
paid thereon; and that in case s
within the aforesaid period every m
forfeit a sum not exceeding twenty p
mary petition to the court of session
clerk.

Penalty for not lodging return.

The sheriff clerk to give notice by advertisement for returns of issued scrip, &c. to be made.

XXI. And be it enacted, That th
six days after the passing of this ac
Edinburgh Gazette, and in two news
the city of Edinburgh, a notice by h
made; and every person shall be at
made to the sheriff clerk; and no pr
invalidated by reason of defect or er
party making such return, knowing
be guilty of falsehood and fraud, an
and punishment accordingly; and
sheriff clerk in regard to such retu
the several committees making or bo
be recovered in such amount from

sheriff of the shire of Edinburgh shall by a writing under his hand fix and determine.

In default of return meeting may be called, which must represent one-third of capital of the company.

XXII. Provided always, and be it enacted, That if by any reason whatever such return of the number of shares, scrip, or receipts actually issued shall not be made within one calendar month from the passing of this act, then a meeting may be called and held under the provisions of this act, and may resolve on dissolution or bankruptcy as by this act is provided, if persons representing shares as before defined equal to at least one third part of the whole capital of the undertaking are present and vote; and any such meeting shall have the same powers as before conferred on a meeting representing one-third of the shares actually issued as aforesaid.

Meeting to decide if dissolution taken to be an act of bankruptcy.

XXIII. And be it enacted, That, in addition to the question of dissolution, it shall be imperative on the meeting to decide whether such dissolution shall or shall not be taken to be an act of bankruptcy for the purpose of having the affairs of the company wound up under the provisions of the act after mentioned; but this provision shall not extend to the case of railways to be made in Scotland.

Scotland exempted.

If meeting decide that affairs shall not be so wound up, &c., then they shall be wound up like ordinary partnerships.

XXIV. And be it enacted, That in case the meeting shall resolve that the affairs of the company shall not be so wound up, or in the case of a railway to be made in Scotland if the majority shall resolve in favour of dissolution, then (subject to the power hereinafter given to the committee and to creditors of the company to petition for a fiat) the affairs of the said company shall be wound up according to the rules applicable to the dissolution of partnership undertakings, and as if the undertaking had been dissolved by mutual consent.

Dissolution not to affect rights of creditors.

XXV. Provided always, and be it enacted, That the resolution to dissolve the company, or the actual dissolution thereof, shall not alter or affect the rights of creditors or other persons not being shareholders in the company, nor any engagements whatsoever which the committee may have entered into, and shall not affect any suits pending before the passing of this act.

If proposal of dissolution rejected, no new meeting to be called for six months to consider the question.

XXVI. And be it enacted, That where any meeting called to consider the question of dissolution shall have determined the question of the dissolution of the company in the negative, no new meeting shall be called to consider the question of dissolution, or any matter relating thereto, until the lapse of six months from the day in which the question was last resolved in the negative.

Any three of the committee, or any creditor or creditors, may petition for a fiat in bankruptcy.

XXVII. And be it enacted, That it shall be lawful for any three of those who were of the committee of any company so dissolved, at any time after the dissolution thereof shall have been resolved, or for any creditor or creditors of such company to such amount as is now by law requisite to support a fiat in bankruptcy in England and Ireland, or a sequestration in Scotland, within three months after the dissolution thereof shall have been resolved, to petition that a fiat in bankruptcy may issue against such company if in England or Ireland, or that the estates of the company may be sequestrated if in Scotland.

On issuing of fiats, companies to be subject to the provisions of the acts for winding up the affairs of joint-stock companies.

XXVIII. And be it enacted, That upon the production of a copy of the London Gazette containing the resolution of any such meeting as aforesaid, whereby it shall be resolved that the dissolution of the company shall be an act of bankruptcy, or upon the petition of any three of the committee as aforesaid, or of any creditor under the last preceding clause, a fiat in bankruptcy shall issue against such company by the registered name or style of such company; and the com-

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7 & 8 Vict. c. 111.

See ante, 74.

8 & 9 Vict. c. 98.

pany shall thereupon be deemed to be within the provisions of act passed in the seventh and eighth years of the reign of her pres Majesty, intituled "An Act for facilitating the winding up of Joi stock Companies unable to meet their pecuniary Engagements and of another act passed in the eighth and ninth years of the re of her present Majesty, intituled "An Act to facilitate the winding of Joint-stock Companies in Ireland unable to meet their pecuni Engagements, in all respects as if a Fiat in Bankruptcy had iss against it under the said Act before its Dissolution;" but this provision not to extend to Scotland.

Sequestration of estates of dissolved Scotch railway companies may be awarded.

XXIX. And be it enacted, That if the company be a company making a railway or railways in Scotland, sequestration of the est of such company shall be awarded on petition for sequestration common form presented in name of any three of the committee of any creditor or creditors of such company to such amount and such evidence of debt or debts of such creditor or creditors as is by law requisite for obtaining sequestration of the estates of any c pany liable to sequestration, there being always produced along w the petition for sequestration a copy of the London or Edinbu Gazette containing the resolution whereby the dissolution of company shall have been resolved upon; and such sequestrat being so awarded, shall be followed out, in regard to the electio an interim factor and trustee and commissioners, and in regar the proof and ranking of debts, the recovery and distribution of estate, and all other matters necessary thereto, in the same man and by the same course of procedure, as nearly as may be, as is law provided in cases of sequestration of the estates of trading c panies in Scotland: Provided always, that such sequestration s not extend to or affect the estates of the individual partners of company, nor preclude the rights or remedies otherwise competen law to the creditors of such company against the individual partn thereof, or the estates of such individual partners.

As to new railways by incorporated companies.

XXX. And be it enacted, That when any company for mak any railway, actually incorporated before the passing of this act, sh have agreed to form any new or other railway or an extension th of, and in respect of which a new or further capital shall have b agreed to be raised or contributed, and shares as hereinbefore defi shall have been issued or otherwise appropriated, and deposits p thereon, then such company or partnership (as regards the new dertaking) shall in all respects be considered as a company or und taking within the provisions of this act; and meetings shall be h and shareholders entitled to shares as aforesaid in the new undert ing shall in manner hereinbefore provided have power to diss such new undertaking, and to decide as to bankruptcy, in all respe as is provided with regard to the companies hereinbefore mentio or defined.

Member against whom judgment shall have been recovered to be repaid by contribution from other members, together with costs.

XXXI. And be it enacted, That where the dissolution of a co pany shall have been resolved under this act, if judgment shall h been recovered or shall afterwards be recovered in any action agai any member of the committee for any debt due from such compa or from such committee in respect of the undertaking, the mem against whom such judgment shall have been recovered shall be titled at law to a contribution from each of the other member such committee towards the payment of the monies recovered

such judgment, and of all costs and expenses in relation thereto, of such a share of the whole amount of such monies, costs, and expenses as would have been borne by such respective member upon an equal contribution by all the members of such committee, and may recover the contributions to which he may be so entitled, or any of them, by action or actions of debt or on the case against all or any of such other members of such committee, but so that no such member shall be liable in any such action as aforesaid for more than the share to which he shall respectively be liable to contribute under this provision.

After dissolution of company no action, &c. to be brought by any attorney, &c. until one month after bill of fees shall have been delivered.

XXXII. And be it enacted, That after the dissolution of any company shall have been resolved under this act no action or suit shall be brought for the recovery of any fees, charges, or disbursements for any business done for such company by any attorney or solicitor, whether in his character of attorney or solicitor, or as agent or otherwise, until the expiration of one calendar month after a bill of such fees, charges, and disbursements, signed by the claimant, shall have been delivered to the committee or official assignee authorised to wind up the affairs of such company, or left at their or his place of business; and it shall be lawful for the Court of Queen's Bench, Common Pleas, or Exchequer, or any judge of either of such courts, and they are respectively hereby required, on the application of such committee or of such official assignee, to refer such bill to be taxed and settled by any taxing officer of the court in which such reference shall be made; and the court or judge making such reference shall restrain the claimant from commencing any action or suit touching his demand pending such reference, and such taxing officer may take such evidence in relation to such bill as he may think fit; and the costs of such reference shall be paid according to the event of such taxation, (that is to say), if such bill when taxed be less by a sixth part than the bill delivered, then the claimant shall pay such costs, and if the bill when taxed shall not be less by a sixth part than the bill delivered, then the party on whose application the reference shall have been made shall pay such costs, to be considered and allowed nevertheless as part of the costs, charges, and expenses of executing the trusts and powers of this act; and every order to be made for such reference shall direct the officer to whom such reference shall be made to tax such costs of such reference to be so paid as aforesaid, and to certify what upon such reference shall be found to be due to or from such claimant in respect of such bill, and of the costs of such reference and after such reference as aforesaid no further or other sum than shall be so found due shall be recoverable in respect of such bill.

Courts may refer bills for taxation to taxing officers.

Interpretation of act.

XXXIII. And be it enacted, That the following words and expressions shall have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or subject-matter; (*videlicet*),

The word "month" shall mean calendar month:

The word "person" shall include corporations.

Act may be amended, &c.

XXXIV. And be it enacted, That this act may be amended, altered, or repealed by any act to be passed in this session of Parliament

numbers, unless the shares, scrip, receipts, or letter do no
numbers], in the projected railway company,
C. D., of , to be my proxy upon any matter rel
tion or bankruptcy of the said company, to vote, dissent
think proper.

Witness my hand, the day of

Taken before me, having verified the numbers and name of the company with the documents produced to me,

Signed

And add whether,

" Master Extraordinary, sheri
justice, consul, vice-consul

---

9 & 10 Vict. Cap. 57.

An Act for regulating the Gauge of Ra
[18*th*

Whereas it is expedient to define the gauge or shall be constructed: Be it enacted by the Queen Majesty, by and with the advice and consent of th and temporal, and Commons, in this present Parli

On what gauge railways shall be made.

and by the authority of the same, That, after the p it shall not be lawful (except as hereinafter excep any railway for the conveyance of passengers on than four feet eight inches and half an inch in Great feet three inches in Ireland: Provided always, that before contained shall be deemed to forbid the maint of any railway constructed before the passing of this other than those hereinbefore specified, or to forbid rails on the same gauge on which such railway is co

be passed in this session of Parliament, or to any railway in any of the last-mentioned counties now in course of construction, or to the two railways severally to be constructed under the authority of two acts passed in this session of Parliament, severally intituled "An Act for making a Railway from the Great Western Railway at West Drayton to Uxbridge in Middlesex," and "An Act for making a Railway from the Great Western Railway at Maidenhead in Berkshire to the Town of High Wycombe in the County of Buckingham;" or to so much of an act passed in this session, intituled "An Act to authorise certain Extensions of the Line of the Oxford, Worcester, and Wolverhampton Railway, and to amend the Act relating thereto," as authorises the construction of a branch railway from the Oxford, Worcester, and Wolverhampton railway to the town of Witney in the county of Oxford; or to an act passed or which may be passed in this session of Parliament "to authorise the Construction of a Railway from Melin-y-Manach to Rhydydefydd in the county of Glamorgan."

9 & 10 Vict. c. clxvi.
9 & 10 Vict. c. ccxxxvi.
9 & 10 Vict. c. cclxxviii.

III. And be it enacted, That the several railways authorised to be constructed by an act passed in the last session of Parliament, intituled "An Act for making a Railway to be called The South Wales Railway," and by an act also passed in the last session of Parliament, intituled "An Act for making a Railway from Monmouth to Hereford, with Branches therefrom to Westbury, and to join the Forest of Dean Railway," and by two acts passed in this session of Parliament, severally intituled "An Act for completing the Line of the South Wales Railway, and to authorise the Construction of an Extension and certain Alterations of the said Railway, and certain Branch Railways in connexion therewith," and "An Act for making a Railway Communication between the City of Bristol and the proposed South Wales Railway in the County of Monmouth, with a Branch Railway therefrom," shall be constructed on the gauge of seven feet.

Certain railways to be on the broad gauge.
8 & 9 Vict. c. cxc.
8 & 9 Vict. c. cxcl.
9 & 10 Vict.
9 & 10 Vict. c. cv.

IV. And be it enacted, That it shall not be lawful, after the passing of this act, to alter the gauge of any railway used for the conveyance of passengers.

Gauge not to be altered.

V. And be it enacted, That nothing hereinbefore contained shall be deemed to affect the provisions of two acts passed in the last session of Parliament, respectively intituled "An Act for making a Railway from the City of Oxford to the Town of Rugby," and "An Act for making a Railway from Oxford to Worcester and Wolverhampton," with respect to the gauge on which they are to be formed, or the additional rails which, according to the several provisions of the last two recited acts, are to be or may be laid down and maintained on the railways thereby authorised, or with respect to the powers thereby conferred on the commissioners of her Majesty's Privy Council for Trade and Foreign Plantations concerning the construction and use of the railways thereby authorised.

Provision as to the Oxford and Rugby, and Oxford, Worcester, and Wolverhampton railways.
8 & 9 Vict. c. clxxxviii.
8 & 9 Vict. c. clxxxiv.

VI. And be it enacted, That if any railway used for the conveyance of passengers shall be constructed or altered contrary to the provisions of this act, the company authorised to construct the railway, or, in the case of any demise or lease of such railway, the company for the time being having the control of the works of such railway, shall forfeit ten pounds for every mile of such railway which shall be so unlawfully constructed or altered, during every day that the same shall continue so unlawfully constructed or altered; and in

Penalty on company for constructing railways contrary to this act.

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estimating the amount of any such penalty any distance less th one mile shall be estimated as a mile.

Railways constructed contrary to this act may be abated.

VII. And be it enacted, That, over and above the penalty here before provided, if any railway used for the conveyance of passeng shall be constructed or altered contrary to the provisions of this a it shall be lawful for the commissioners of her Majesty's Woo Forests, Land Revenues, Works, and Buildings, or for the Lords the Committee of her Majesty's Privy Council for Trade and Fore Plantations, to abate and remove the same or any part thereof constructed or altered contrary to the provisions of this act, and restore the site thereof to its former condition.

Recovery of penalties.

VIII. And be it enacted, That all penalties under this act may recovered from the company liable to pay and make good the sa as under the provisions of an act passed in the last session of Par ment, intituled "An Act for consolidating in One Act certain P visions usually inserted in Acts authorising the making of R ways," a penalty for any infringement of the last-recited act is re verable against a company authorised to construct a railway.

8 & 9 Vict. c. 20.
See ante, 156.

Act may be amended, &c.

IX. And be it enacted, That this act may be amended or repea by any act to be passed in this session of Parliament.

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9 & 10 VICT. CAP. 62.

An Act to abolish Deodands. [18*th August*, 1846.

Whereas the law respecting the forfeiture of chattels which h moved to or caused the death of man, and respecting deodands unreasonable and inconvenient: Be it enacted by the Queen's m excellent Majesty, by and with the advice and consent of the L spiritual and temporal, and Commons, in this present Parliam assembled, and by the authority of the same, That from and after first day of September, One thousand eight hundred and forty- there shall be no forfeiture of any chattel for or in respect of same having moved to or caused the death of man; and no coron jury sworn to inquire, upon the sight of any dead body, how the ceased came by his death, shall find any forfeiture of any cha which may have moved to or caused the death of the deceased any deodand whatsoever; and it shall not be necessary in any ind ment or inquisition for homicide to allege the value of the inst ment which caused the death of the deceased, or to allege that same was of no value.

Deodands and forfeiture of chattels moving to or causing death abolished from and after 1 Sept. 1846.

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9 & 10 VICT. CAP. 93.

An Act for compensating the Families of Persons killed by Accide [26*th August*, 1846.

Whereas no action at law is now maintainable against a per who by his wrongful act, neglect, or default may have caused death of another person, and it is oftentimes right and expedient t

and carried on by and before the said commissioners, who shall have and exercise the same powers, rights, and authority in respect of all such proceedings as if they had been originally commenced before the said commissioners.

An office to be provided under the direction of the Treasury.

III. And be it enacted, That an office shall be provided in London or Westminster, under the directions of the Commissioners of Her Majesty's Treasury, for the use of the commissioners appointed under this act, at or to which all notices and other documents shall be given or sent which are now by law required to be given or sent at or to the office of the lords of the said committee.

Documents sealed by commissioners to be evidence.

IV. And be it enacted, That the commissioners of railways shall cause a seal to be made for the purposes of their commission, and all orders and other documents proceeding from the said commissioners, and purporting to be sealed or stamped with the seal of the said commissioners, and signed by two or more of the said commissioners, shall be received as evidence of the same respectively, in all courts, and before all justices and others, without any further proof thereof.

Commissioners to appoint a secretary, officers, &c., subject to approval of Treasury.

V. And be it enacted, That the said commissioners may appoint and at their pleasure remove a secretary and so many other officers and servants as to them, subject to the approval of the Commissioners of Her Majesty's Treasury, shall appear necessary for carrying on the business of the said commission.

Payment of salaries to commissioners, officers, and servants.

VI. And be it enacted, That the president and two other commissioners, and the secretary, officers, and servants of the said commissioners, shall be paid by such salaries as shall be from time to time appointed by the Commissioners of Her Majesty's Treasury, not exceeding the sum of two thousand pounds in the case of the president, and the sum of one thousand five hundred pounds in the case of either of the two other paid commissioners, and in the case of the secretary and other officers and servants of the said commission, such fit salaries as shall be from time to time appointed, with due reference to their several stations and the duties they will have to perform.

President not disqualified to sit in Parliament.

VII. And be it enacted, That the office of the said president shall not be deemed such an office as shall render him incapable of being elected or of sitting or voting as a member of the Commons House of Parliament, or as shall avoid his election if returned, or render him liable to any penalty for sitting or voting in Parliament.

Unpaid commissioners not disqualified to sit in Parliament.

VIII. And be it declared and enacted, That the office of any other of the said commissioners who shall not be entitled to receive a salary by reason of his appointment to such office, shall not be deemed such an office as shall render him incapable of being elected or of sitting or voting as a member of the Commons House of Parliament, or as shall avoid his election if returned, or render him liable to any penalty for so sitting or voting; and if any such unpaid commissioner shall be a member of the House of Commons at the time of his appointment, his acceptance of such appointment shall not avoid his election or vacate his seat in Parliament; and for the purpose of distinguishing which commissioners are qualified to sit in Parliament under this act, the warrant appointing any such commissioner shall specify that he will not be entitled, by virtue of such appointment, to receive any salary or remuneration whatsoever.

Commissioners to exercise powers now vested in the Board of Trade.

IX. And whereas in some cases railway companies have exceeded the powers given to them under the acts constituting them, or have otherwise acted contrary to the provisions of the said acts, or of the general acts for regulating railways; be it enacted, That it shall be

9 & 10 VICT. CAP. 105.

An Act for Constituting Commissioners of Railways.

[*28th August*, 1846.]

Whereas by an act passed in the fourth year of the reign of her M
3 & 4 Vict. c. 97. jesty, intituled "An Act for regulating Railways;" and by anoth
5 & 6 Vict. c. 55. act passed in the sixth year of the reign of her Majesty, intituled "A
Act for the better regulation of Railways, and for the Conveyance
Troops;" and by another act passed in the eighth year of the reig
7 & 8 Vict. c. 85. of her Majesty, intituled "An Act to attach certain Conditions
the Construction of future Railways authorised or to be authoris
by any Act of the present or succeeding Sessions of Parliament, a
8 & 9 Vict. cc. 20, 33. for other Purposes relating to Railways;" and by two other acts pa
ed in the last session of Parliament, for consolidating in one act certa
provisions usually inserted in acts authorising the making of railwa
respectively, and by sundry local acts of Parliament, certain powe
with respect to railways are vested in the Lords of the Committee
her Majesty's Most Honourable Privy Council for Trade and Forei
Plantations; but it is expedient that a separate department be cons
tuted for these purposes, and for other purposes relating to railway
Be it enacted by the Queen's most excellent Majesty, by and with t
advice and consent of the lords spiritual and temporal, and Commo
in this present Parliament assembled, and by the authority of t
Her Majesty empowered to appoint commissioners of railways, one of whom to be president, and from time to time remove them. same, That it shall be lawful for her Majesty, by warrant under t
royal sign-manual, to appoint any number, not more than five p
sons, to be commissioners of railways, and from time to time, at
pleasure, to remove all or any of the said commissioners, and to
point others in their stead, and to appoint one of the said comm
sioners to be their president; and any two of the said commissio
shall be competent to act in the execution of the powers vested
them by this act; and upon any vacancy in the number of the s
commissioners, it shall be lawful for the surviving or continu
commissioners, not being less than two, to act, and their acts shall
as valid as if no such vacancy had occurred; and every such ap
ment or new appointment, and also the day on which the said co
missioners shall begin to act in execution of this act, shall be p
lished in the London Gazette.

Power of Board of Trade transferred to commissioners. II. And be it enacted, That from and after the day which shall so specified in the London Gazette as the day on which the s commissioners shall begin to act in execution of this act, all powers, rights, and authority now vested in or exercised by the of the committee of her Majesty's Privy Council for Trade and P Plantations by virtue of the recited acts, or by any other act of P liament, or otherwise howsoever, with respect to any railway or tended railway, shall be transferred to and vested in and exercis the commissioners of railways, as fully as if they had been named the said several acts of Parliament instead of the lords of the committee; and all provisions of the said acts shall be deem apply to the said commissioners instead of the lords of the said mittee; and all proceedings now pending before the lords of the committee, or carried on under their authority, shall be contin

id carried on by and before the said commissioners, who shall have id exercise the same powers, rights, and authority in respect of all ch proceedings as if they had been originally commenced before the id commissioners.

An office to be provided, under the direction of the Treasury.

III. And be it enacted, That an office shall be provided in London Westminster, under the directions of the Commissioners of Her ajesty's Treasury, for the use of the commissioners appointed under is act, at or to which all notices and other documents shall be given sent which are now by law required to be given or sent at or to e office of the lords of the said committee.

Documents sealed by commissioners to be evidence.

IV. And be it enacted, That the commissioners of railways shall use a seal to be made for the purposes of their commission, and all ders and other documents proceeding from the said commissioners, d purporting to be sealed or stamped with the seal of the said commissioners, and signed by two or more of the said commissioners, all be received as evidence of the same respectively, in all courts, d before all justices and others, without any further proof thereof.

Commissioners to appoint a secretary, officers, &c., subject to approval of Treasury.

V. And be it enacted, That the said commissioners may appoint d at their pleasure remove a secretary and so many other officers d servants as to them, subject to the approval of the Commissioners Her Majesty's Treasury, shall appear necessary for carrying on the siness of the said commission.

Payment of salaries to commissioners, officers, and servants.

VI. And be it enacted, That the president and two other commissioners, and the secretary, officers, and servants of the said commissioners, shall be paid by such salaries as shall be from time to time pointed by the Commissioners of Her Majesty's Treasury, not exding the sum of two thousand pounds in the case of the president, d the sum of one thousand five hundred pounds in the case of her of the two other paid commissioners, and in the case of the retary and other officers and servants of the said commission, such salaries as shall be from time to time appointed, with due reference their several stations and the duties they will have to perform.

President not disqualified to sit in Parliament.

VII. And be it enacted, That the office of the said president shall t be deemed such an office as shall render him incapable of being cted or of sitting or voting as a member of the Commons House of rliament, or as shall avoid his election if returned, or render him ble to any penalty for sitting or voting in Parliament.

Unpaid commissioners not disqualified to sit in Parliament.

VIII. And be it declared and enacted, That the office of any other the said commissioners who shall not be entitled to receive a salary reason of his appointment to such office, shall not be deemed such office as shall render him incapable of being elected or of sitting or ting as a member of the Commons House of Parliament, or as shall oid his election if returned, or render him liable to any penalty for sitting or voting; and if any such unpaid commissioner shall be a mber of the House of Commons at the time of his appointment, s acceptance of such appointment shall not avoid his election or cate his seat in Parliament; and for the purpose of distinguishing hich commissioners are qualified to sit in Parliament under this t, the warrant appointing any such commissioner shall specify that will not be entitled, by virtue of such appointment, to receive any lary or remuneration whatsoever.

Commissioners to exercise powers now vested in the Board of Trade.

IX. And whereas in some cases railway companies have exceeded e powers given to them under the acts constituting them, or have herwise acted contrary to the provisions of the said acts, or of the neral acts for regulating railways; be it enacted, That it shall be

APPENDIX. STATUTES.

the duty of the said commissioners to prevent any such u proceedings, by the exercise of any powers now vested in the the said committee.

Commissioners to report to Her Majesty and both Houses of Parliament upon any case specially referred to them.

X. And be it enacted, That it shall be the duty of the sa missioners to examine and report to Her Majesty and both H Parliament upon any subject relating to any railway, or p railway, which shall be specially referred to them for their by Her Majesty, or by either House of Parliament; and in of any application to Parliament for any act for making or m ing any railway, it shall be their duty, if so directed by Her or by the authority of either House of Parliament, to inquire port, on local inspection or otherwise,—

Firstly, Whether there are any lines or schemes competi the proposed railway:

Secondly, Whether by such bill it is proposed to take pow uniting with such railway, or proposed railway, any oth way or canal, or to purchase or lease any railway, canal road, or other public work, undertaking or easement:

Thirdly, Whether by such bill it is proposed to constitu branch railway, or any other work in connexion with t posed railway:

Fourthly, Whether any plans, maps, and sections of any su posed railway which, pursuant to any order of either H Parliament, shall have been deposited in their office, are and if not, in what particulars and how far they are in and whether or not, in the opinion of the commissioner errors as they shall find are material to the object for whi plans and sections are required.

Commissioners empowered to inspect and survey proposed railways.

XI. And be it enacted, That for the purposes aforesaid t commissioners shall be empowered, by themselves, or by such tors as they shall appoint for that purpose, to inspect and surv proposed line of railway, and for the purposes of any such surv and their inspectors shall have all the powers which under an

4 & 5 Vict. c. 30.

passed in the fifth year of the reign of her Majesty, intitule Act to authorize and facilitate the completion of a survey of Britain, Berwick-upon-Tweed, and the Isle of Man, any offi persons appointed by or acting under the orders of the Master-G and Board of Ordnance have for the purpose of making and ca on any survey authorized by the last-recited act; and all the sions of the last-recited act in anywise relating to any such shall be deemed to apply, so far as they are applicable, to any which may be directed by the said commissioners under this ac

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The Ordnance Survey Act, 4 & 5 Vict. c. 30.

(*a*) The following are the provisions of this statute:—

Whereas several counties in that part of the United Kingdom England have been surveyed by officers appointed by the Master Gene Board of Ordnance, and it is expedient that general surveys and m England, Scotland, Berwick upon Tweed, and of the Isle of Man, sh made and completed by officers in like manner appointed; and th boundaries of the several counties in England and Scotland, and of upon Tweed, and of the Isle of Man, should be ascertained and marke

Justices at Quarter Sessions to appoint persons to assist in ascertaining the boundaries of counties, cities, boroughs, &c.

Be it therefore enacted, &c., That from and after the passing of this act, purpose of enabling the Master General and Board of Ordnance to ma complete such surveys and maps of England, Scotland, Berwick upon and the Isle of Man, in manner aforesaid, it shall and may be lawful justices assembled at any quarter sessions, or adjournment thereof,

vided that all allowances and payments made under this act of the same kind as those which by the last-recited act are to be paid out of

The Ordnance Survey Act, 4 & 5 Vict. c. 30.

and for any county, riding, or division in England, Scotland, Berwick upon Tweed, and the Isle of Man, upon the application in writing of any officer appointed by the Master General and Board of Ordnance for the purposes of this act, such application to be transmitted to the Clerk of the Peace fourteen days at the least before the holding of the court at which such application shall be considered, who shall cause notice of such application to be inserted in the newspapers in which county advertisements are commonly inserted seven days at the least before the holding of such court, to nominate and appoint one or more fit and proper person or persons to aid and assist, when required, any officer appointed as aforesaid in examining, ascertaining, and marking out the reputed boundaries of each county, city, borough, town, parish, burghs royal, parliamentary burghs, burghs of regality and barony, extra-parochial and other places, districts and divisions, in England, Scotland, Berwick upon Tweed, and the Isle of Man; and such person shall from time to time act under and obey such directions as he shall receive from the officer or other person appointed by the Master General and Board of Ordnance to make such surveys and maps as aforesaid: Provided always, that if any person shall produce any false, forged, untrue, or fabricated appointment, every such person shall forfeit and pay the sum of fifty pounds.

Persons producing fabricated appointments to forfeit 50*l*.

Surveyor, &c. empowered to enter lands to fix boundaries.

II. And be it enacted, That for the execution of the purposes of this act it shall and may be lawful for any person appointed by the justices as aforesaid, and for any other person acting in aid and under the orders of such person, and for any officer or person appointed by or acting under the orders of the Master General and Board of Ordnance, and they are hereby respectively authorized and empowered, from time to time, after notice in writing of the intention of entering shall have been given to the owner or occupier, as the case may be, to enter into and upon any estate or property of any county, or of any body politic or corporate, ecclesiastical or civil, or into and upon any land, ground, or heritages of any person or persons whomsoever, for the purpose of making and carrying on any survey authorized by this act, or by the order of the Master General and Board of Ordnance, and for the purpose of fixing any mark or object to be used in the survey, or any post, stone, or boundary mark whatsoever, and to fix and place any such object, post, stone, or boundary mark in any such estate or property, land or ground, or heritages, and to dig up any ground, for the purpose of fixing any such object, post, stone, or boundary mark, for such object or purpose, and also to enter upon any estates or property, lands, grounds, or heritages, through which any such person appointed by the justices as aforesaid, and any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance, shall deem it necessary and proper to carry any boundary line for the purposes of this act at any reasonable time in the day, until the surveying, ascertaining, and marking out of any reputed boundary line shall be completed according to the directions of this act: Provided always, that in every case in which it shall be necessary to any person appointed by the justices as aforesaid, for any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance, or his or their assistant or assistants, to fix any such object, post, stone, or boundary mark within any walled garden, orchard, or pleasure ground, such person appointed by the justices aforesaid, or any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance, or his or their assistant or assistants, shall give three days' notice to the occupier of such garden, orchard, or pleasure ground, of his intention so to do, and it shall be lawful for such occupier to employ any person whom he may think fit to fix such object, post, stone, or boundary mark within such garden, orchard, or pleasure ground, at such time, in such place or places, and

Where it is necessary to fix any mark in any garden, &c. the occupier may employ a person to fix it.

the aids granted by Parliament to her Majesty on account
Board of Ordnance, and also all other expenses incurred by th

The Ordnance Survey Act. 4 & 5 Vict. c. 30.

in such manner as such person appointed by the justices as aforesaid,
officer or other person appointed by and acting under the orders of the
General and Board of Ordnance, or his or their assistant or assistan
direct: Provided also, that such person appointed by the justices as a
or any officer or other person appointed by and acting under the orde
Master General and Board of Ordnance, or his or their assistant or as
and workmen, shall do as little damage as may be in the executio
several powers to them granted by this act, and shall make satisfactio
owners or occupiers (as the case may require) of such lands, grou
heritages, or owners of trees, (as the case may require,) which shall
way hurt, damaged, or injured, for all damages to be by them sustain
by the execution of all or any powers of this act, in case the same sha
manded: Provided always, that in case of dispute between the said pe
pointed by the justices as aforesaid, or any officer or other person a
by and acting under the orders of the Master General and Board of O
on the one hand, and the owner or occupier (as the case may be), on t
hand, as to the amount of damage sustained, the same shall be ascerta
determined by any two or more justices in petty sessions assemble
county in which the lands, grounds, heritages, or trees may be situ
vided always, that any owner or occupier as aforesaid, who shall think
aggrieved by the decision of the justices, may appeal against such de
the justices of the said county in quarter sessions assembled, who sh
and determine such appeal, and shall increase or diminish the am
damages awarded by the justices in petty sessions, and shall award co
against the appellant, as the justice of the case shall seem to them to
Provided always, that such appeal shall be prosecuted at such quarter
as shall be holden not less than twenty-one days nor more than four
months after the decision of the justices in petty sessions: Provided
that any person so appealing shall give notice to the clerk of the said
in petty sessions, within seven days of their decision, of his intention t
against their decision, and shall enter into sufficient recognizance to p
such appeal.

Satisfaction to be made for damages.

Appeal to Quarter Sessions.

Sheriffs in Scotland to settle the amount of compensation.

III. And be it enacted, That the amount of the damages for which
sation is provided under this act shall, in *Scotland*, be ascertained
termined by the sheriff or steward of the county or stewartry, whose
in the matter shall be final and conclusive, and not subject to review,
pension, advocation, reduction, or otherwise.

Clerk of the Peace of each county shall deliver to surveyor a list of all the cities, towns, boroughs, parishes, &c. within the county, on penalty of 10*l*.

IV. And be it enacted, That the clerk of the peace of each an
county shall, within twenty-one days after he shall be thereunto req
writing by any person appointed by the justices as aforesaid, or by an
or other person appointed by and acting under the Master General an
of Ordnance, prepare and deliver to such person appointed by such ju
aforesaid, or any officer or other person appointed by and acting u
orders of the Master General and Board of Ordnance, a list contai
names and descriptions of the several hundreds, cities, boroughs,
towns, parishes, or other places within such county; and each such
the peace shall be paid by the said board adequate remuneration for his
and for any expenses incurred by him in pursuance of such requisiti
if any clerk of the peace shall refuse or neglect or omit to make o
such list, in compliance with the request of such surveyor, every such
the peace so offending shall forfeit a sum not exceeding ten pounds
less than two pounds, in the discretion of the justice or other judge, o
court before whom such offender shall be convicted.

Clerk of the Peace shall attend sur-

V. And be it enacted, That for the purpose of surveying, ascertain
marking out the reputed boundaries of any such county, it shall be l

missioners in making such survey and inspection, shall be paid by the provisional committee or directors or other persons who shall be

The Ordnance Survey Act, 4 & 5 Vict. c. 30.

any such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance within such county, and such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance, is hereby authorized and empowered, by notice in writing signed with his name, and directed and delivered to any such clerk of the peace, to require the attendance of any and every such clerk of the peace in or for any and every such county, or in or for any adjoining county, either in the same or any adjoining county, at such time (not being less than twenty-one days after the date of such notice) and at such place as shall be specified in such notice, and to produce to such person appointed by such justices as aforesaid, or such officer or other person appointed by and acting under the Master General and Board of Ordnance, any books, maps, papers, or other documents, in his custody or possession as such clerk of the peace, which such person may require for the purpose of carrying this act into execution, at which time and place every such clerk of the peace shall and he is hereby required to attend upon such person accordingly, and to aid and assist such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance, in the execution of this act; and in case it shall happen that there shall not be any clerk of the peace for any such county or adjoining county, or being such any such officer shall omit or neglect to attend at the time and place mentioned in any such notice, then and in such case it shall be lawful for any such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the Master General and board of Ordnance, by like notice, to require any two or more inhabitants of any such county to attend in the place and stead of such clerk of the peace; and every such inhabitant to whom any such notice shall be directed and delivered shall and he and they is and are hereby required to attend upon such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance, accordingly, and to assist such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance, in the execution of the purposes of this act: Provided always, that no clerk of the peace shall be obliged to attend as herein directed at such time or at such place or in such manner as shall interfere with the proper discharge of his ordinary duties as clerk of the peace, nor shall he be called upon to produce any books, maps, papers, or other documents the production of which can in any way injuriously affect the interests of each such county.

veyor on twenty days' notice of defining the boundaries of counties, &c.

On failure of clerk of the peace attending, two inhabitants may be required to attend.

VI. And be it enacted, That it shall be lawful for any such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance, at the time mentioned in any such notice, accompanied by the clerk of the peace for the county the reputed boundaries of which are to be defined and marked out, and by the clerk of the peace of any county adjoining thereto, or by such inhabitants as aforesaid, and such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance, clerk of the peace, and other persons, is and are hereby authorized and required to perambulate the boundaries of such county, for the purpose of surveying, ascertaining, and marking the same, according to the best of their power and information; and for that purpose it shall be lawful for such person appointed by such justices as afore-

Boundaries of the counties to be ascertained, &c., and marked out by posts, stones, &c.

APPENDIX. STATUTES.

the promoters of the said intended railway; and in case of no ment of the same in any case, the amount of such allowance

The Ordnance Survey Act, 4 & 5 Vict. c. 30.

said, or any officer or other person appointed by and acting under th of the Master General and Board of Ordnance, clerk of the peace, a persons, to call on any inhabitant of any such counties to assist the doing; and when it shall appear to such person appointed by such ju aforesaid, or any officer or other person appointed by and acting u orders of the Master General and Board of Ordnance, that the repute daries of any such county are sufficiently ascertained, such boundaries marked out by such person appointed by such justices as aforesaid officer or other person appointed by and acting under the orders of the General and Board of Ordnance, in such manner as may be necessary putting down of any posts, blocks, or bolts of wood, metal, or ston the affixing of any marks on or against any church, chapel, bridge, h other public or private building or post, and with such distinguishing or figures as such person appointed by such justices as aforesaid, or an or other person appointed by and acting under the orders of the Ma neral and Board of Ordnance, shall think fit and proper for the occasi

Penalty on removing or defacing boundary stones, &c.

VII. And be it enacted, That if any person not duly authorized s away, remove, or displace, or alter the situation of any boundary sto block, bolt, or mark which shall be set up and placed for the purpose act, or shall wilfully deface, mutilate, break, or destroy any such b stone, post, block, bolt, or mark, every person so offending shall for pay a sum not exceeding ten pounds and not less than two pounds, in cretion of the justice, or other judge, officer, or court before whom su der shall be convicted.

Penalty on obstructing survey, &c.

VIII. And be it enacted, That if any person shall wilfully obstruc der any person appointed by such justices as aforesaid, or any officer person appointed by and acting under the orders of the Master Gen Board of Ordnance, in the execution of his duty in or about the asc and marking out of the boundaries of any county under the provision act, or shall in any way resist such person appointed by such justices said, or any officer or other person appointed by and acting under th of the Master General and Board of Ordnance, in the performance of under this act, or shall obstruct, hinder, assault, or resist any clerk peace, or any workman or other person acting in aid of any such pe pointed by such justices aforesaid, or any officer or other person appo and acting under the orders of the Master General and Board of O in the execution of this act, every person so offending shall forfeit a sum not exceeding ten pounds and not less than two pounds, in th tion of the justice or other judge or officer before whom such offender convicted.

Allowance to parties, &c. attending to point out boundaries.

IX. And be it enacted, That every person who shall, in pursuance from any person appointed by such justices as aforesaid, or any officer person appointed by and acting under the orders of the Master Gen Board of Ordnance, attend and accompany any other person appoi such justices as aforesaid, or any officer or such person appointed by ing under the orders of the Master General and Board of Ordnanc ascertaining, surveying, and marking out the boundary of any coun the provisions of this act, shall receive, and shall be entitled to receiv trouble and loss of time, such sum of money or allowance as the Ma neral and Board of Ordnance shall think fit, for every day during wh person shall be employed by or engaged with such person appointed justices as aforesaid, or any officer or other person appointed by a under the orders of the Master General and Board of Ordnance, in cution of this act, upon a certificate to be signed by such person appo

ments, and expenses shall be deemed a specialty debt due to Her Majesty from such committee-men, directors, and other persons, and such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance.

The Ordnance Survey Act, 4 & 5 Vict. c. 30.

X. And be it enacted, That the amount of damage sustained by the occupiers of grounds, lands, heritages, or owners of trees, as aforesaid, and the allowance to be made to the said person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance, and to such other persons as aforesaid, shall be paid by the Board of Ordnance out of the aids granted to such board by Parliament.

Payments for damage, how to be made.

XI. And be it enacted, That if any clerk of the peace, or other person, who shall be summoned or required in manner hereinbefore directed, by any person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance, to attend such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance, in the execution of this Act, shall refuse or neglect or omit to attend such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance, or shall refuse or neglect or omit to inform and point out, to the best of his knowledge, to such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the Master General and Board of Ordnance, the boundaries of any county, or shall wilfully make any false statement or misstatement with respect to any such boundaries, or shall wilfully refuse or neglect or omit to give any information in the power of such clerk of the peace or other person to give or afford with respect to any such boundaries, every such clerk of the peace or other person so offending shall forfeit and pay a sum not exceeding ten pounds, and not less than two pounds, in the discretion of the justices, or other judge, officer, or court before whom such offender shall be convicted.

Penalty on parties, &c not attending, or not pointing out boundaries.

XII. And be it enacted, That this present Act, or any clause, matter, or thing herein contained, shall not extend, or be deemed or be construed to extend, to ascertain, define, alter, enlarge, increase or decrease, nor in any way to affect, any boundary or boundaries of any county, city, borough, town, parish, burghs royal, parliamentary burghs, burghs of regality and barony, extra-parochial and other places, districts, and divisions, by whatsoever denomination the same shall be respectively known or called, nor the boundary or boundaries of any land or property, with relation to any owner or owners, or claimant or claimants of any such land respectively, nor to affect the title of any such owner or owners, or claimant or claimants respectively, in or to, or with respect to any such lands or property, but that all right and title of any owner or claimant of any land or property whatever within any hundred, parish, or other division or place whatever, shall remain to all intents and purposes in like state and condition as if this Act had not been passed; any description of any such land, with reference to any such hundred, parish, or other division or place whatever, or otherwise or anything in this Act contained, or any law, custom, or usage to the contrary, in anywise notwithstanding.

Act not to affect any boundaries or rights of property.

XIII. And be it enacted, That all penalties and forfeitures inflicted or imposed by this Act shall and may be recovered in a summary way by the order and adjudication of any two justices of the peace for the county or place, or of the sheriff or court of deemsters, in which such penalty shall be incurred, on complaint to them for that purpose exhibited, and shall afterwards be levied, as well as the costs of such proceedings, in case of non-payment, by distress, poinding, or other legal process, and sale of the goods and chattels

Recovery of penalties before two justices of the peace, sheriff, deemsters, &c.

APPENDIX. STATUTES.

each of them severally, and shall be sued for and recovered ingly.

The Ordnance Survey Act, 4 & 5 Vict. c. 30.

of the offender or offenders, or person or persons liable to pay the warrant under the hand and seal of such justices and of such sheriff, and seal of the court of deemsters, or other legal process; and such sheriff, and court respectively are hereby authorized and required to before them any witness or witnesses, and to examine such witnesses upon oath (or affirmation), of and concerning all offences, and forfeitures under this Act, and to hear and determine the same; overplus (if any) of the money so levied or recovered, after discha fine, penalty, or forfeiture for which such warrant or other legal proc be issued, and the costs and expenses of recovering and levying th shall be returned, upon demand, to the owner or owners of the chattels so seized or distrained; and in case such penalties or forfeitu not be forthwith paid upon conviction, then it shall be lawful for such sheriff, or court respectively to order the offender or offenders so co to be detained and kept in safe custody until return can be convenien to such warrant of distress or poinding, or other legal process, u offender or offenders shall give sufficient security, to the satisfaction justices, sheriff, or deemsters, for his or their appearance before such sheriff, or other proper officers, on such day or days as shall be a for the return of such warrant of distress or poinding, or other legal such day or days not being more than seven days from the time of ta such security, and which security the said justices, sheriff, or deem spectively are hereby empowered to take by way of recognizance, cau otherwise: but if, upon return of such warrant, it shall appear sufficient distress can be had thereupon, then it shall be lawful justice, or any two justices of the peace for such county or place as a or for such sheriff or deemsters, and they are hereby authorized and by warrant under their hand and seal, or under the hand of such s other legal process, to cause such offender or offenders to be committe gaol of such county or place, there to remain, without bail or mainp any term not exceeding two calendar months, unless such penalties feitures respectively, and all reasonable charges, shall be sooner p

Application. satisfied; and such penalties and forfeitures, when so levied, shall and applied to the use of any infirmary or charitable institution in county in which such offence shall be committed, in such manner justices, sheriff, or deemsters respectively shall direct and appoint.

Plea of general issue. XIV. And be it enacted, That if any person shall be sued or prosec anything done or executed in pursuance of this act, or of any clause, or thing herein contained, such person may plead the general issue, the special matter in evidence, for his defence.

Interpretation clause. XV. And be it enacted, That in construing this act the word "c shall be taken to include hundred, city, borough, town, parish, burgh parliamentary burghs, burghs of regality and barony, extra-paroch other places, districts, and divisions, by whatsoever denomination t respectively shall be known or called; and that the words "clerk peace" shall be taken to include any person executing the duties of the peace, sheriff clerk, sheriff clerk depute, and steward clerk depute, warden, parochial or any public officer, of any county, ward, parish, h wapentake, division, or districts in England, Scotland, or Berwic Tweed, and setting quest and moars of any parish and the great in every sheading in the Isle of Man; and that every word importing the number shall, when necessary to give full effect to the enactments her tained, be deemed to extend and be applied to several persons or t well as one person or thing; and that every word importing the m gender shall, when necessary, extend and be applied to a female as well a

XII. And be it enacted, That this act may be amended or repealed by any act to be passed in this session of Parliament.

Act may be amended, &c.

The Ordnance Survey Act, 4 & 5 Vict. c. 30.

XVI. And be it enacted, That in Scotland the sheriff clerk shall, instead of the clerk of the peace, perform the duties hereby imposed upon the clerk of the peace in reference to England of furnishing the lists of burghs, cities, towns, parishes, wards, districts, divisions, and places within any county, and shall be liable in the penalties hereby imposed in case of neglect or refusal so to do.

Sheriff's clerk in Scotland to furnish lists.

XVII. And be it enacted, That in Scotland the sheriff shall, as regards the boundaries of the county, and the wards, districts, parishes, and other divisions thereof, upon application made to him by the officer appointed by the Master General and Board of Ordnance for that purpose, appoint a fit and proper person or persons to attend the officer appointed by the Master General and Board of Ordnance, to point out such boundaries, and aid him in the execution of this act: Provided always, that as regards the boundaries of any royal or parliamentary burgh, city, or town, the magistrates and council thereof shall, upon application made to them by the officer appointed by the Master General and Board of Ordnance as aforesaid, appoint a fit and proper person or persons to attend him for the purposes aforesaid; and if any of the persons to be so appointed by the sheriff and magistrates and council respectively, and accepting the appointment, shall neglect or refuse to attend and aid in the execution of this act in the manner herein required, such persons shall be liable in the penalties hereby imposed upon the clerk of the peace or other person neglecting or refusing so to do in England.

Sheriff and magistrates of burghs in Scotland to appoint persons to attend the surveyor.

XVIII. And be it enacted, That all the powers in this act contained shall cease and determine on the thirty-first day of December one thousand eight hundred and forty-six.

Duration of Act.

NOTE.—By stat. 9 & 10 Vict. c. 46, the above statute is further continued until the 31st December, 1851.

FORMS.

APPENDIX.

FORMS.

Provisional Registration.

The following Forms are contained in this Appendix:

I. FORMS RELATING TO PROVISIONAL REGISTRATION .
II. —— OF SUBSCRIBERS' AGREEMENT . . . .
III. —— OF PARLIAMENTARY CONTRACT . . .
IV. —— RELATING TO PLEADINGS . . . . .
V. —— RELATING TO COMPENSATION, &c. . . .

The following Notices have been published at the Joint Companies' Registry Office.

At the Council Chamber, WH
6 Nov. 1846.

After 1st Dec. 1846, returns to be made in duplicate.

No. 1.—By the Right Honorable the Lords of the Comm Council appointed for consideration of all matters relating t and Foreign Plantations.

In pursuance and by virtue of the provisions of the 17th se the Act 7 & 8 Vict. c. 110,

It is ordered by the Lords of the Committee of Privy Cou Trade, that all Returns by the said Act required to be mad Registrar of Joint Stock Companies shall, from and after the of December, be made in duplicate.

By Order of the Lords of the Committee,
(Signed) I. MAC GREGOR, Joint Se

Notice as to renewal of provisional registration, (see 7 & 8 Vict. c. 110, sec. 23, ante, 48.)

No. 2.—The Promoters of Provisionally Registered Joint Companies, and their Agents or Solicitors, are desired to ta tice :—That all applications for the renewal of Certificates visional Registration must be made before the expiration original Certificate, otherwise a renewal Certificate will granted.

Notice as to provisional directors.

No. 3.—It is particularly desired, that Provisional Direc Members of Provisional Committees, in subscribing the cor act and agreement to take shares, will write the date of signi their names.

November 1846.

Notice as to the obtaining of evidence from the Registry Office.

No. 4.—Parties requiring the attendance of any Officer Office, or the production of Documents here Registered, in any of Law, are requested,—

1st. Previously to obtaining such Summons or Subpœna, to communicate with the Assistant Registrar.

2d. To specify in the Summons or Subpœna the Registered No. of every Return required to be produced, for ascertaining which every facility will be afforded.

March 26, 1846.

I.

TABLE OF FORMS RELATING TO PROVISIONAL REGISTRATION.

FORM A. 1. *Return as to the Name of Company* 229
FORM A. 2. ———— *the Business of the Company* ..... *ib.*
FORM A. 3. ———— *the Promoters of the Company*..... *ib.*
B. 4. ———— *the Place of Business of the Company* .. 230
C. 5. ———— *the Provisional Committee or Directors*.. 231
D. ———— *Consent to act as Directors, and Agreement to take Shares*..... *ib.*
E. 6. ———— *Return as to the Provisional Officers* 232
F. 7. ———— *the Subscribers*..... *ib.*
G. 8. ———— *List of the Titles of Documents returned* 233
H. 9. *Duplicate of the Appointment of a Solicitor to the Provisional Company* 234
H. ———— *Acceptance of Office by the Solicitor* .... *ib.*
I. 10. ———— *Revocation of the Appointment by the Provisional Directors* 235
K. 11. ———— *Resignation of office by the Solicitor* .... *ib.*
a. 12. *Return of Change in the Name, Business, or Place of Business of the Company*..... 236
b. 13. *Return of Promoters, Provisional Directors, Provisional Officers, or Subscribers—Withdrawals from—Additions to—or Changes in, Company*..... *ib.*
X. 14. *Certificate of Receipt of Subscription Contract* 237
15. *List of Forms after complete Registration* 239

N.B. The first three (at the least) of these Returns are requisite for obtaining a Certificate of Provisional Registration (§ 4);

And must be made before publishing any prospectus or advertisement of the proposed Company; or receiving money on Shares, or issuing scrip or Share-letters, or contracting on behalf of the Company;

Under a penalty not exceeding £25 (§ 24).

The first eight of these Returns must be made within one month after the particulars required to be returned have been ascertained or determined (§ 5).

Under a penalty not exceeding £20 (§§ 4, 5).

Every addition to or change in those particulars must be returned within a like interval.

Under a similar penalty (§§ 4, 5).

All Returns must be signed by one or more of the Promoters of the Company or their registered Solicitor. (§§ 6, 16).

Duplicates of the appointment or revocation of the appointment of such Solicitor, and of his acceptance or resignation of the office, must be returned to the Registrar (§ 6), the two former being signed by one or more of the Promoters, and the two latter by the Solicitor;

For which purposes Forms 9, 10, and 11 are provided.

APPENDIX.
FORMS.
Provisional Registration.

[CARE should be taken that the following Forms are strictly
to. They may be obtained of Mr. John Smith, 49, Long Ac
is the authorized publisher of the Forms.]

[Form A. Nos. 1,

PROVISIONAL REGISTRATION.

Return of the Name, Business, and Promoters of the ——
pany, pursuant to Section 4.

Date of Receipt at the Registry Office, —— 18—.
Serial Number of the Return . . . . . .
Fee on Registry . . . . . .

N. B.—These items are not to be filled up by the Company.

Upon this Return being made, a Certificate of Provisional Reg
may be obtained.

Each sheet required for this Return should be signed by one or mo
Promoters.

The Date within should be that of the period up to which the
made out.

1, 2, 3.—The Name, Business, and Promoters of the —— Co

Provisional Registration. } { Dated
—— 1

1. Name of the proposed Company.	2. Business or Purpo

3. The Promoters of the Company.

Name.	*Occupation, Rank, or usual Title.*	*Place of Business, (if any).*	*Place of Resi (as, the Street, or Place, and the Hous*

Signa

[Form B. No. 4.

PROVISIONAL REGISTRATION.

Return of the Place of Business of the ——— Company, pursuant to Section 4.

Date of Receipt at the Registry Office, ——— 18—.
Serial Number of the Return . . . . . .
Fee on Registry . . . . . .

N. B.—These items are not to be filled up by the Company.

This Return must be signed by one or more of the Promoters or their registered Solicitor.

The date on the other side should be that of making the Return.

4.—The Place of Business of the ——— Company.

Provisional Registration. } { Dated, —— 18—.

County, City, or Town	*Name of the Street, Square, or Place in which the Provisional Place of Business or Place of Meeting is situate.*	*Number (if any), or other designation of the House or Office.*

Dated ——— 18—. *Signature.*

[Form C. No. 5.

PROVISIONAL REGISTRATION.

Return of the Provisional —— of the ——— Company, pursuant to Section 4.

Date of Receipt at the Registry Office, ——— 18—.
Serial Number of the Return . . . . . .
Fee on Registry . . . . . .

N. B.—These items are not to be filled up by the Company.

This is a Return of the body of persons acting in the formation of the Company; they should return themselves under the name which they may have determined to assume—"Provisional Committee," "Provisional Directors," or otherwise.

The Return must be accompanied by the Consent and Agreement, for which a form is provided in Sheet D.

The Return must be made within a month after the Provisional Direction or Committee is constituted (§ 5),

Under a penalty not exceeding £20.

Each Sheet of this Return must be signed by one or more of the Promoters of the Company, or their registered Solicitor.

The Date within should be that of the day up to which the Return is made out.

APPENDIX.

FORMS.

Provisional Registration.

5.—The Provisional ——— of the ——— Company.

Provisional Registration. } { Dated, —— 18—.

Name.	*Occupation, Rank, or usual Title.*	*Place of Business, (if any).*	*Place of Residence, (as, Street, Square, or Place, and No. of the House).*

Signature.

[Form D

PROVISIONAL REGISTRATION.

Consent to Act, and Agreement to take Shares by the Provisional — of the ——— Company.

Provisional Registration. } { Dated, —— 18—.

We, the undersigned, Promoters of the * ——— Company, do, and each of us doth, hereby declare his consent to be Provisional † ——— of the said Company, and each of us doth hereby separately for himself agree with ‡ ———

as Trustees for the said Company, to take one or more share or shares in the said proposed undertaking, upon such share or shares being allotted to him according to the Provisions of the said Company.

Provisional†	Provisional†

* *Here insert, before the name of the Company, the words* "Proposed" *or* "Provisionally Registered" *as the case may be.*

† *Here insert the appellation assumed by the persons acting in the formation of the Company,* "Provisional Directors," *or otherwise.*

‡ *Here insert the names of the Trustees of the Company.*

[Form E. No. 6.

PROVISIONAL REGISTRATION.

Return of the Provisional Officers of the———Company. Pursuant to Section 4.

Date of Receipt at the Registry Office, ——— 18—.
Serial Number of the Return . . . . . .
Fee on Registry . . . . . .

N.B.—These items are not to be filled up by the Company.

This Return must be made within one month after the first of the Provisional Officers is appointed (§§ 4, 5),
Under a penalty not exceeding £20.
Each Sheet of this Return must be signed by one or more of the Promoters of the Company, or their registered Solicitor.
The Date within should be that of the period up to which the Return is made out.

6.—The Provisional Officers of the———Company.

Provisional Registration. } { Dated, —— 18—.

Description of Office.	*Name of Officer.*	*Occupation, Rank, or usual Title.*	*Place of Business, (if any).*	*Place of Residence, (as, the Street, Square, or Place, and No. of the House).*

Signature.

[Form F. No. 7.

PROVISIONAL REGISTRATION.

Return of the Names, &c. of the Subscribers to the ——— Company. Pursuant to Section 4.

Date of Receipt at the Registry Office, ——— 18—.
Serial Number of the Return . . . . . .
Fee on Registry . . . . . .

N.B.—These items are not to be filled up by the Company.

The Surnames in this Return must be stated before the Christian Names, and in alphabetical order.
This Return must be made within a month after any one person shall have agreed, in writing, to take any shares in the proposed Company (§§ 4, 5),
Under a penalty not exceeding £20 (§ 5).
The first and last Columns are not to be filled up by the Company.
Every Sheet of this Return must be signed by one or more of the Promoters of the Company, or by their registered Solicitor (§§ 6, 16).

APPENDIX.
FORMS.
Provisional Registration.

7.—The Names, &c. of the Subscribers to the ——— Comp
Provisional Registration. } { Dated, ——

Serial Number.	*Name.*	*Occupation, Rank, or usual Title.*	*Place of Business, (if any).*	*Place of Residence, (as, the Street, Square, or Place, and No. of the House).*	*Ref Ke su Cl Des ri*

Sig

[Form G. N

PROVISIONAL REGISTRATION.

List of Titles of Documents returned by the ——— *Compan suant to Section* 4.

Date of Receipt at the Registry Office, ——— 18—
Serial Number of the Return . . . . . .
Fee on Registry . . . . . .

N.B.—These items are not to be filled up by the Company

A copy of every Prospectus, Circular, Hand-bill, Advertisement, such Document, relative to the formation or modification of the Company, and of every addition to or change in the same, must be previous to their circulation (§ 4).

And if any Document so returned be a modification of one previou tered, a reference must be given on this paper to the title and date o of such previous Document.

The Documents returned should be presented either wholly in wholly in writing.

When written they should be written on foolscap paper. And whe should be pasted or otherwise fastened on foolscap paper where pract

As well this Paper as each Sheet of any Document presented for Re must be signed by one or more of the Promoters of the Company registered Solicitor, (§§ 6, 16).

The Date on the other side should be that of making up the Retur

8.—List of the Titles of the Documents returned by the Company.

Provisional Registration. } { Da —

Title and Date of previous Document.	*Title of Document now ret*

Sig

[Form H. No. 9.

PROVISIONAL REGISTRATION.

Duplicate of the Appointment of a Solicitor for the Promoters of the ——— Company and of his Acceptance thereof. Pursuant to Section 6.

Date of Receipt at the Registry Office, ——— 18—.
Serial Number of the Return . . . . . .
Fee on Registry . . . . . .

N.B.—These items are not to be filled up by the Company.

Until Registration of the Appointment of a Solicitor all the Returns prescribed for Provisionally Registered Companies must be signed by one or more of the Promoters of the Company.

Subsequently to such Registration, and until the Revocation or Resignation of the Appointment, they must be signed by the Registered Solicitor.

Duplicates of the Appointment of such Solicitor, and of his acceptance of the office, must be returned to the Registrar.

For these purposes the annexed Forms are provided.

The Duplicate of the Appointment must be signed by one or more of the Promoters of the Company.

That of the Acceptance must be signed by the Solicitor.

The Appointment must be either of an Individual or of a Firm.

If of a Firm the Names of the Partners and the style of the Firm should be distinctly stated on the Appointment.

And the Acceptance should be signed by one Partner, and should be expressed to be on behalf of the Firm.

Provisional Registration. } 9.—Duplicate of the Appointment of a Solicitor for the Promoters of the ——— Company, and of his Acceptance thereof.

We, Promoters of the ——— Company, do hereby appoint ——— Gentleman, *——— of Her Majesty's Court of ——— to be Solicitor for the Promoters of the said Company, for the purposes specified in the Sixth Section of the Act for the Registration, Incorporation, and Regulation of Joint Stock Companies (7 & 8 Vict. c. 110).

Signed on behalf of the Promoters of the said Company, by } ——— ——— ——— } *Promoters of the said Company.*

Dated this ——— day of ——— 18—.

I, the undersigned, do hereby accept the office of Solicitor for the Promoters of the ——— Company, for the purposes specified in the Sixth Section of the Act for the Registration, Incorporation, and Regulation of Joint Stock Companies (7 & 8 Vict. c. 110).

Dated this ——— day of ——— 18—.

Signature.

* *Insert* "Attorney" *or* "Solicitor," *as the case may be.*

PROVISIONAL R

Duplicate of the Revocation of the Promoters of the ——— Com

Date of Receipt at the Reg
Serial Number of the Retu
Fee on Registry . . . . .

N. B.—These items are not to

This Duplicate should be signed by Company.

Provisional Registration. } 10.—Duplicate of ment of a ——— C

We, the undersigned, Pro do hereby revoke the Appointme the Promoters of the said Compan Sixth Section of the Act for the Regulation of Joint Stock Compan

Signed on behalf of the Promoters of the said Company by } ———

Dated this ——— day of ——— 18—.

PROVISIONAL R

Duplicate of Resignation of Office of the ——— Company. P

Date of Receipt at the Reg
Serial Number of the Retu
Fee on Registry . . . . .

N. B.—These items are not to

This Duplicate should be

Provisional Registration. } 11.—Duplicate of citor for Company.

I, the undersigned, do he for the Promoters of the ——— fied in the Sixth Section of the ration, and Regulation of Joint c. 110).

Dated this —— day of ——— 18—.

[Form a. No. 12.

PROVISIONAL REGISTRATION.

Return of Change in the * ——— *of the* ——— *Company* (*Provisionally Registered*). *Pursuant to Section* 4.

Date of Receipt at the Registry Office, ——— 18—.
Serial Number of the Return . . . . . .
Fee on Registry . . . . . .

N.B.—These items are not to be filled up by the Company.

Change in the* ——— of the ——— Company.

Provisional Registration. } { Dated — 18—.

As originally Registered.	* As altered.

Signature.

[Form b. No. 13.

PROVISIONAL REGISTRATION.

Return of † ——— *List of* ‡ ——— *of the* ——— *Company*, (*Provisionally Registered*). *Pursuant to Section* 4.

Date of Receipt at the Registry Office, ——— 18—.
Serial Number of the Return . . . . . .
Fee on Registry . . . . . .

N.B.—These items are not to be filled up by the Company.

* Insert "Name," "Business," or "Place of Business," as the case may be.
† Insert "Changes in," "Additions to," or "Withdrawals from," as the case may be.
‡ Insert "Promoters," "Provisional Directors," "Provisional Officers," or "Subscribers," as the case may be.

APPENDIX.
FORMS.
Provisional Registration.

* ——— the List of † ——— of the ——— Compa

Provisional Registration. } { Dated ——

Name.	*Occupation, Rank, or usual Title.*	*Place of Business, (if any).*	*Place of Res Street, Sq Place, and N the Hous*

Sign

* Insert "Changes in," "Additions to," or "Withdrawals from
case may be.

† Insert "Promoters," "Provisional Directors," or "Subscribers
case may be.

[Form X. No.

Certificates of Receipt of Subscription Contract, Plans and
and Copy of Subscription Contract of the ——— C
Pursuant to Section 9.

Date of Receipt at the Registry Office, ——— 18—
Serial Number of the Return . . . . . .
Fee on Registry . . . . . .

N.B.—These items are not to be filled up by the Company.

Companies "for executing any Bridge, Road, Cut, Canal, R
Aqueduct, Waterwork, Navigation, Tunnel, Archway, Railway, Pi
Harbour, Ferry, or Dock, which cannot be carried into execution
obtaining the authority of Parliament," will be entitled to a Cert
Complete Registration:

1. On depositing at the Proper Offices of the two Houses of P
and within the proper time such Deeds of Partnership
scription Contracts as shall be required by the Standing
the two Houses;
2. On returning to the Registrar Copies of such Deeds of Partn
Subscription Contracts;
3. And on returning the annexed Certificates (appointed by the
Trade) of the due receipt of the required Plans, Sections, a
of Reference (§ 9).

The first of these Certificates must be signed by some person auth
behalf of the Clerk of the Parliaments, and the second by the first
Clerk of the Private Bill Office.

The Copy of the Subscription Contract or Deed of Partnership

written distinctly on foolscap paper, headed "Subscription Contract, (or, "Deed of Partnership," as the case may be), of the ——— Company."

The Return must be signed by one or more of the Promoters of the Company, or their registered Solicitor.

Complete Registration of Parliamentary Companies. { Certificates of the Receipt of the Subscription Contract, Plans, &c., of the ——— Company, at the Offices of the two Houses of Parliament. } Dated, ——18—.

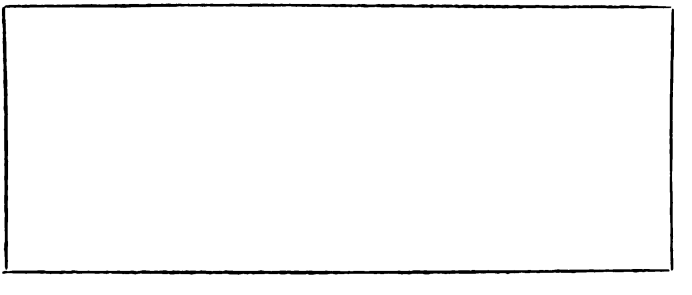
I hereby certify that the Promoters of the ——— Company have duly deposited at the Office of the Clerk of the Parliaments the Copies of the Subscription Contract, and the Plans, Sections, and Books of Reference required by the Standing Orders of the House of Lords to be so deposited, in order to their obtaining the Authority of Parliament for their proposed undertaking.

Signed

I hereby certify that the Promoters of the ——— Company have duly deposited at the Private Bill Office of the House of Commons the Subscription Contract, and the Plans, Sections, and Books of Reference required by the Standing Orders of the House to be so deposited, in order to their obtaining the authority of Parliament for their proposed undertaking.

Signed

Complete Registration of Parliamentary Companies. } Copy of the Subscription Contract of the ——— Company. { Dated, —— 18—.



APPENDIX.
FORMS.
Complete Registration.

No. 15.—LIST OF FORMS OF RETURNS TO BE M AFTER COMPLETE REGISTRATION.

As Railway Companies are seldom registered completely, it is no necessary to print the following Forms. Copies may be obtain Long Acre.

Every Return made by a Company after complete Registration mus Seal of the Company (§ 16), and must be signed by two (at th the Directors (§§ 16, 46).

1.—*Return of Changes in or Additions to the List of Sha*

FORM P. { I.—*By Change of Name.*
II.—*By Signature to Deed of Settlement, or Deed thereto* (§ 3).

Q. III.—*By Acquisition of Shares.*

These Returns must be made Half-yearly, in the M *January* and *July* in every Year, by every Comp pletely registered under the Act, except Compan porated by Act of Parliament (§ 11),

Under a penalty not exceeding £20 upon every (§ 11).

None of the rights of a Shareholder can be exercise his registration (§ 13).

But any party to a transfer may cause it to be re registration by the Directors before the time for yearly Return, on a request in writing to that may himself make the Return, with proof of th and request.

The Form supplied in Form Q. may be rendered a to that purpose by marking under the name of t pany the words, "by request."

The party making the request should be indicated.

R. 2. *Annual Return of the Name and Place of Busin Company.*

This Return must be made annually in the month of or *February*, by every Company completely under the Act, except Companies incorporated Parliament,

Under a penalty not exceeding £20 (§ 14).

It is in the power of the Board of Trade, on the appl any Company, to appoint any other period of the making this Return (§ 14).

S. 3. *Return of Names of the Auditors of the Company.*

This Return must be made upon every appointment tors (§§ 7, 10).

It should especially specify if any and which of the have been appointed by the Shareholders present at Meeting (§ 38).

On the appointment of an Auditor by the Board of return in like form must be made (§ 38).

T. U. 4. . *Return of the Balance Sheets and Auditors' Report.*

PART I.—*Receipts and Expenditure.*
II.—*Liabilities and Assets.*
III.—*Report by the Auditors.*

These Returns must be made by the Directors of the Company within 14 days after the Meeting at which the Accounts shall have been produced (§ 43).

V. 5. . *Return of the Bye-Laws of the Company.*

Bye Laws have no force till registered (§ 47).
The Copy returned for registration must be written in a distinct hand, with a marginal abstract in the Column provided for that purpose.
A printed copy will be accepted, if on foolscap paper, and accompanied by a marginal abstract.

LIST OF FEES PAYABLE IN THE OFFICE FOR THE REGISTRATION OF JOINT STOCK COMPANIES.

Certificates.

	£	s.	d.
For a Certificate of Provisional Registration	5	0	0
For a Renewed Certificate of Provisional Registration	2	0	0
For a Certificate of Complete Registration	5	0	0
And on every £1,000 value of declared Capital—			
in the case of Companies formed previously to the 1st day of November, 1844	0	0	6
in the case of Companies formed subsequently to that day..	0	1	0
N.B.—But three-fourths of this fee in respect of Capital will be repaid by H. M. Treasury if the Company obtain an Act of incorporation within two years after Complete Registration.			
For an Annual Certificate	1	0	0
N.B.—The Certificate of Formal Registration applicable to Companies formed previously to the 1st of November, 1844, is given gratis.			

Registration of Returns.

Upon the first Sheet of every Return (except those of Changes in the List of Shareholders)	0	1	0
Upon every subsequent Sheet	0	0	6
And (unless a second Copy is returned) for every folio of 72 words contained in such Return	0	0	3
For Returns of Changes or Additions to the List of Shareholders— upon every Change registered	0	1	0

Searches.

For inspection of each Office Index (except the Alphabetical Index of Companies)	0	0	6
For inspection of each Volume of the Companies' Registers	0	1	0
——— Original Document in the General Register	0	1	0
N.B.—The Alphabetical Index of Companies may be inspected gratis.			

Office Copies or Extracts. £

For every folio of 72 words .....

Revision of Documents.

For every folio of 72 words contained in the Text of the Deed..... if written

For every folio of 72 words contained in the Text of the Deed ..... if printed

No charge is laid upon the Tabular Schedule prescribed by the Act.

II.

FORM OF SUBSCRIBERS' CONTRACT.

THIS INDENTURE (*a*), made the —— day of ——, in the ye Lord 18—, between the several Persons, Corporations, and Compa have hereunto subscribed their names and affixed their seals, or wh mon seal or respective common seals is or are hereunto affixed, bei rally Subscribers to the Undertaking hereinafter mentioned, calle ——," of the one part; —— —— [*trustees*] (*b*), of the second p [*committee*] (*c*), (being some of the parties hereto of the first part

(*a*) The difference between the Precedent that follows, and those which have been ordinarily adopted, lies chiefly in this: instead of specifying minutely the powers intended to be conferred on the directors, the following Precedent gives to the directors absolute powers over the property and affairs of the company in general terms, restrained only by the objects of the company, and by two or three special provisions. Ordinarily, the powers of directors have been specified, and ingenuity has been taxed to furnish by anticipation appropriate powers for every contingency that could by possibility arise. The intention has obviously been to leave them without restraint in any case, and it has appeared to the writer a more simple and effectual mode of fulfilling that intention to express it in plain and direct terms. Experience has shewn that no ingenuity or care can foresee and provide for every state of circumstances that may arise, except by adopting a wide and comprehensive form of authority. Subscribers, rarely, indeed, consult the contents of the d they sign; but the draftsma perhaps, on that very accoun himself bound to give them trol to which they are entitl that principle, the Precede to a general meeting of shar the whole control of the c saving only the indemnity directors. Thus, the direct free to act in every possib tingency, unless restrained l to whom the whole capital Company belongs.

(*b*) The introduction of tr the Subscribers' Deed is ha cessary. Except the inden the directors, there is no pa deed properly forming the of a covenant, and even in spect the declaration, that t tors shall have a lien on the for their costs and expenses, the covenant to indemnify t tors (considering the amoun deposits required by the Orders) very unimportant.

(*c*) The parties of the th will consist of those who h

* I am indebted to the kindness of a learned friend at the Chanc Mr. Thomas H. Terrell, for the two following Forms, which have, been extensively used. The accompanying notes are also extract Mr. Terrell's valuable work on the Liabilities of a Subscriber to a Company.

third part: WHEREAS a Public Company has been duly promoted and provisionally registered, (according to the provisions of an Act of Parliament made and passed in the 7th and 8th years of the reign of her present Majesty, intituled "An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies") by the name of [*here insert the name of the proposed Company*]. AND WHEREAS the said Company has been so promoted, with the object (*d*) [*here state the objects of the Company*]: AND WHEREAS the parties hereto of the third part have hitherto acted as Managing Directors, and taken all necessary steps for the formation of such Company, and have proposed that the Capital of the said Company should be the sum of £——, divided into —— Shares of £—— each: AND WHEREAS the parties hereto of the first part have agreed to become respectively the holders of the number of Shares in the said Company affixed to their respective names at the foot of these presents, and have at or before the execution of these presents respectively paid into the hands of certain bankers of the said Company, appointed by the parties hereto of the third part, the sum of £—— per Share, in part of such Shares, and by way of deposit thereon, the receipt of which said sum of £—— per Share by the said bankers, the said parties hereto of the third part do hereby respectively acknowledge: NOW THESE PRESENTS WITNESS, that, for the more complete formation of the said Company until the same shall be established and incorporated by and under the authority of Parliament, the parties hereto of the first part do hereby mutually agree with each other and with the persons, Companies, and Corpo-

posed the committee of management. It may be useful here to advert to a point connected with the 7 & 8 Vict. c. 110, which has occasioned considerable embarrassment. The 4th section of that act requires a provisional registration of — First, the proposed name of the intended company; secondly, the business or purpose of the said company; thirdly, the names of its promoters: and also the following particulars, when and as from time to time they shall be decided on, namely; fourth, the place of business; fifth, "the names of the members of the committee or other body acting in the formation of the company, their respective occupations, places of business (if any), and places of residence, together with a written consent on the part of every such member or promoter to become such, and also a written agreement on the part of such member or promoter, entered into with some one or more persons as trustees for the said company, to take one or more shares in the proposed undertaking, which must be signed by the member or promoter whose agreement it purports to be." It has been usual to announce the formation of companies with lists of provisional committee-men so extensive as to render compliance with the act with regard to registration almost impossible, and doubts have arisen whether the omission of the parties announced as members of the provisional committee does not involve those whose duty it is to register in the penalties imposed by the act. What may be the meaning of the words "*acting in the formation of the Company*" must be mere speculation; but it has been suggested, as a means of escaping from the difficulty, that those members of the provisional committee alone, who have formed the committee of management, should be registered under the 5th clause, and that all the others should be registered as promoters. It is not very easy to suggest any objection to this plan.

(*d*) The object should be stated as widely and comprehensively as possible, consistently with the terms of the Prospectus. It will be observed, that, in the Precedent, the powers of the directors are limited almost exclusively by the objects of the company. In more than one deed which has come under the observation of the writer, the object has been thus stated: "to establish a communication by Railway between A. and B., with power to the Directors to vary the termini, or any part of the intermediate line;"—a mode of statement absurdly indefinite.

APPENDIX. FORMS. *Subscribers' Contract.*

rations who have subscribed or shall subscribe their names, and hav
or shall affix their seals, or, being Companies or Corporations, have
shall affix their common seals to the certain other Indentures of
date, tenor, purport, and effect herewith, and in which said In
respectively reference is made to this present Indenture, and which co
together with this Indenture the Subscribers' Agreement for the und
hereinbefore mentioned (*e*); and each of them doth hereby, for him
herself, his and her heirs, executors, and administrators, and so fa
parties hereto of the first part consist of Companies, Corporations, o
Politic, for itself and its successors (*f*), and as to and concerning
acts, deeds, and defaults of himself, herself, and itself respectively,
her, and its respective heirs, executors, administrators, and successo
nant with the said [*trustees*], their executors and administrators, in
expressed in the several clauses hereinafter expressed, and numbered
ively from 1 to 12, that is to say:—

1. That the several parties hereto of the third part, or the survivo
vivors of them, shall constitute and be the Managing Directors of
Company.

2. That all powers hereinafter vested in such Managing Directors
may be exercised by a majority of such Directors present at any
thereof duly convoked, within one quarter of an hour after the time
convocation, such meeting to consist of not less than three members.

3. That at any meeting of such Managing Directors a Chairman
elected, and that such Chairman shall have a casting vote.

4. That the said Managing Directors shall have power to increa
number by admitting thereto any Shareholder or Shareholders of the s
pany holding in his or their own right respectively not less than fort
in the Capital of the said Company: and that if any of such Direct
at any time hereafter cease to hold in his own right the full number
Shares in the Capital of the said Company, he shall from that time
be a Managing Director; nevertheless all acts done by him as such M
Director shall be held valid and binding until a Memorandum shall be
on the minute-book of the Managing Directors of his having ceased
member thereof.

5. That if any Managing Director shall resign his office, the pow
authorities hereby vested in the Managing Directors for the time be
remain and be in the others of such Managing Directors in the same
as though no such resignation had taken place: Provided neverthel
no Managing Director shall be considered to have resigned until he sh
sent to the Secretary of the Company notice in writing of such resigna

6. That the Managing Directors for the time being shall cause a
books to be kept, wherein shall be entered every Resolution, Regulat
Bye-law made or passed by such Directors, and that such book an
shall at all convenient times be open to the inspection and perusal
Shareholder of the said Company who shall have executed these pres
shall produce to the Secretary of the said Company his Scrip Certifica

7. That the said Managing Directors shall take such proceedings

(*e*) It is usual for one copy of the deed to remain in London, and another to be circulated through the country for the signatures of subscribers. By the clause in the Precedent, the two are identified as one deed.

(*f*) The Standing Orders provide, that the parties subscribing bind themselves, their heirs, executors, and administrators, but make no provision for the case of corporations who bind *their successors*. The writer is informed that Committees on S
Orders have required, that,
part of the shares required to
scribed for by the Standing
has been held by companies
porations, the subscription sh
certain individuals of the con
corporation; and that, in d
this form of subscription, the
is not in compliance with the
ing Orders.

in their discretion shall think fit, or as Parliament shall require, either in the ensuing or any subsequent Session or Sessions of Parliament, for obtaining an act or acts of Parliament for incorporating, establishing, and regulating this present Company, and authorising the construction of the said intended Railway, and all works incidental thereto, and for carrying out and effecting any of the hereinbefore-mentioned objects, or any part or parts, portion or portions thereof, and for the insertion in such act or acts of all or any of such powers, clauses, and provisions, with respect to the making of the said Railway, or the termini, branches, or direction thereof, or any of the objects aforesaid, or the constitution or the regulation of the said Company, or the powers, rights, and liabilities of the Directors for the time being of the said Company, or of the Shareholders thereof, and also with respect to the dissolution or the termination of the said Company, as they in their discretion shall think fit, or as Parliament may require.

8. That (subject to the provisions of a certain act of Parliament, made and passed in the 7th and 8th years of the reign of her present Majesty, intituled "An Act for the Registration, Incorporation, and Regulation of Joint-stock Companies," and subject to the provisions of this present Indenture), until an act or acts shall be obtained for the incorporation of the said Company, and the execution of the hereinbefore-mentioned objects, the said Company shall be regulated, carried on, and conducted in such manner, and subject to such bye-laws as the said Managing Directors for the time being shall in their absolute discretion think proper; and that the said Managing Directors for the time being shall have full, absolute, and uncontrolled power to increase the capital of the said Company; to deal with, dispose of, alienate, or affect the capital, property, and affairs of the said Company; and to enter into any contracts for any purpose whatever, in the name, and on behalf, and for the benefit of the said Company, at their absolute discretion, as fully and effectually to all intents and purposes as if the said Managing Directors for the time being were the sole and absolute proprietors of the capital and property of the said Company, and were the only Shareholders therein, each and every of the parties hereto of the first part hereby consenting to be bound by and adopting whatever the said Managing Directors have done, or whatever the Managing Directors for the time being of the said Company shall or may do in the premises, so far as the same shall be legal and consistent with the provisions of this Indenture (*g*): Provided nevertheless, that every contract entered into by the said Managing Directors for lands, services for surveys or otherwise, stores, and other things not necessarily required for the establishment of the said Company, shall be made and entered into conditionally on the completion of the said Company, and the obtaining of such act or acts of Parliament as aforesaid.

9. That the parties hereto of the first part shall and will save, defend, keep harmless, and indemnify the said Managing Directors, and each and every member thereof, of and from all payments, loss or losses, costs, charges, damages, and expenses whatsoever, which such Managing Directors, or any member thereof, have or hath already incurred or become liable to, in or in reference to the formation of the said intended Railway, or the establishment of this Company, before or since the provisional registration thereof, or shall or may incur, bear, pay, sustain, or become liable for, or be put unto, in the exercise and execution of the powers and authorities hereby vested in them or him, as members or a member of such Managing Directors; and that the several sums of money so deposited or hereafter to be deposited by the parties hereto of the first part in respect or on account of the respective shares of the parties hereto of the first part in the said Company, shall be charged and chargeable with all such payments, losses, costs, charges, damages, and ex-

(*g*) When powers to amalgamate with a rival company are not conferred by a subscribers' contract, see *Gilbert* v. *Cooper*, 10 Jur. 680, ante, 617, in the text of this work.

penses; and the Managing Directors for the time being of the said C shall be at liberty to apply all or any portion of such sums of m payment and discharge of such losses, costs, charges, damages, penses (*h*).

10. That the said Managing Directors for the time being shall hav before any such act or acts as aforesaid shall have been obtained, to the said Company; and that, upon such dissolution, the several sum as aforesaid by the parties hereto of the first part respectively, sha paid to them respectively, deducting therefrom a rateable proportion payments, losses, costs, charges, damages, and expenses as aforesaid.

11. That if, at any time before such act or acts, as is hereinbef tioned, be obtained, a requisition (signed by not less than —— parties hereto of the first part, who shall have executed these and who shall, at the time of leaving such requisition, produce or be produced to the Secretary of the said Company for examination, certificates for the shares subscribed for by them respectively) sha at the office of the said Company, requiring the Managing Director time being to call a General Meeting of the Shareholders the Managing Directors for the time being shall, within one week from th of such requisition, cause advertisements to be inserted in the newspapers, calling such meeting at some convenient place within s from the leaving of such requisition; and that the resolutions of such Meeting, or a majority of the persons present thereat, as to the prop affairs of the said Company, or any part thereof, or any matters relating thereto, shall be binding and conclusive on every member o holder of the said Company: Provided nevertheless, that no such Meeting shall have power to alter or in any way affect the provisi tained in the ninth clause hereinbefore set forth; Provided also, th Shareholder present at such meeting shall be entitled to one vote in of every twenty shares held by him in the capital of the Company, o

(*h*) This clause of indemnity is more extensive than any which has come under the writer's observation. But a state of circumstances will probably arise, raising a question between the subscribers and the directors, somewhat difficult of solution. In the cases in which scrip, at the time of its issue, has been at a premium, the deposits required have been readily paid. But several companies have very recently been formed, whose scrip has met with no demand. In these cases the allottees of shares have, for the most part, neglected to pay the deposits, and have forfeited the scrip. A few, in the hope of an improvement in the value of the scrip, have paid their deposits, the total of which, however, have been insufficient to defray the enormous preliminary expenses for surveys, &c., which have been incurred. If it should eventually occur in such cases that a sufficient sum shall not have been deposited to comply with the Standing Orders, and the company consequently be dissolved, will it be competent to the directors t upon the whole of the mo posited, without compelling bution from the defaulters? clause in the subscribers' ag might obviate the difficulty, would be open to very seriou tion on the ground of reason and fairness. It is a questio out of the new combinations cumstances created by railw culation, of grave importance which it would be idle to sp It has been the practice of d in many of the schemes late the public, to withhold pay their own deposits until the l ment at which it is required Standing Orders. If a dissol the company should take place a non-payment of the requi posits, and it should be found directors themselves have not di ed their obligations in this re is impossible to suppose the be at liberty to fix all the co expenses on those who have their engagements.

vote if he shall be the holder of a number less altogether than twenty shares in the capital of the said Company.

12. That nothing in this Indenture contained shall be construed to authorise or empower the said Managing Directors for the time being of the said Company, or any other person or persons, to do any act whatever inconsistent with or in opposition to any rule of law, or act of Parliament, or the Standing Orders of the Houses of Lords and Commons.

IN WITNESS whereof the said parties to these presents of the second part have hereunto set their hands and seals on the day and year first above written, and the several parties hereto of the first part have hereunto set their hands and seals, and such of them as are Corporate Companies or Bodies Politic, their respective common seals, on the several dates annexed to their respective signatures or seals.

III.

FORM OF PARLIAMENTARY CONTRACT (*i*).

THIS INDENTURE, made the —— day of ——, in the year of our Lord 18—, between the several persons, Companies, and Corporations whose names are subscribed and seals affixed, or whose common seal is or are affixed in the Schedule hereunder written or hereunto annexed, of the first part; —— —— [*trustees*], (trustees named and appointed for the purpose of enforcing and giving effect to the covenants hereinafter contained), of the second part: WHEREAS a Public Company has been duly promoted and provisionally registered, according to the provisions of an act of Parliament, made and passed in the 7th and 8th years of the reign of her present Majesty, intituled "An Act for the Registration, Incorporation, and Regulation of Joint-stock Companies," by the name of [*here insert the name of the proposed Company*]: AND WHEREAS the said Company hath been so promoted, with the object [*here state the object of the Company*]: AND WHEREAS it hath been proposed that the Capital of the said Company shall be the sum of £—— sterling, divided into —— Shares of £—— each: AND WHEREAS the parties hereto of the first part have agreed to become respectively the holders of the number of Shares in the said Company affixed to their respective names at the foot of these presents, and have paid up the several sums of money specified in that behalf at the foot of these presents, in part of the Shares so held by them respectively: AND WHEREAS, by an Indenture bearing even date with these presents, the parties hereto of the first part, under their respective hands and seals, by their respective covenants, appointed certain persons therein mentioned to be Managing Directors of the said Company, and gave to such Managing Directors all necessary powers and remedies for carrying on and conducting the said Company, and for procuring an act or acts of Parliament for the establishing of the same, and for managing the property and affairs thereof: NOW THIS INDENTURE WITNESSETH, that each of them the said several persons, parties hereto of the first part, together with each of the persons, Companies, and Corporations who have subscribed or shall subscribe their names, and who have affixed or shall affix their seals or common seals to a certain other Indenture of the same date, tenor, purport, and effect herewith, and in which said Indenture reference is made to this present Indenture, and which constitutes together with this Indenture the Subscription or Parliamentary Contract for the undertaking hereinbefore mentioned, doth hereby, for himself and herself, and his and her heirs, executors and administrators, and, so far as the parties hereto of the first part consist of Companies, Corporations, or Bodies Politic, for itself and its successors,

(*i*) See ante, Appendix 248, note.

APPENDIX.

FORMS *Relating to Pleadings.*

and to the extent only of the sum of money set opposite to his, h
name in the said Schedule hereto, and not further or otherwise, (
promise, and agree with and to the said [*trustees*], and their exec
administrators, in manner following, that is to say, that each of them th
veral parties hereto of the first part hath subscribed, and doth hereby s
the sum of money set opposite to his, her, or its name in the said
hereto, for the purpose of making, establishing, and carrying out th
before-mentioned Railway communications, works, matters, and obje
said, with full power for the said Managing Directors to take such pr
and adopt such measures as they in their discretion shall think
Parliament shall require, for obtaining an act or acts of Parliame
next or any subsequent Session for all or any of the objects afores
obtain an act or acts of Parliament in the next Session for any porti
said undertaking, as the said managing Directors shall think fit, an
make or renew in any future Session or Sessions, the application or
tions, for an act or acts for all or any of the aforesaid objects, an
insertion in such act or acts of all or any of such powers, clauses, a
sions, with respect to the making of the said Railway, or the termini, l
or direction thereof, or any of the objects aforesaid, or the regulati
said Company, or the powers, rights, and liabilities of the Director
time being in the said Company, or the Shareholders thereof, and
respect to the dissolution or other termination of the said Company, a
their discretion shall think fit, or as Parliament shall require: AND
DENTURE FURTHER WITNESSETH, that each and every of them the sa
persons, parties hereto of the first part, doth hereby, for himself an
and his or her heirs, executors, and administrators, and, so far as th
hereto of the first part consist of Companies, Corporations, or Bodie
for itself and its successors, and as concerning himself, and herself,
only, and his, her, and its own acts, deeds, and defaults respectively,
with the said [*trustees*], their executors and administrators, that
every one of them the said several parties hereto of the first part resp
his or her heirs, executors, or administrators, or its successors, shall
truly pay or cause to be paid the full amount subscribed by each of
said several persons and corporations, or such part thereof as shall
been paid by them respectively at the date of their respective signa
these presents, in such sums and at such place or places, and at such
times, as shall be required by any act or acts of Parliament to be ap
as aforesaid, or as the Directors or others authorised by the said ac
shall lawfully direct or appoint: IN WITNESS whereof the said parties
presents of the second part have hereunto set their hands and seals
day and year first above written, and the several parties to these pr
the first part have hereunto set their hands and seals, and such of the
Corporations, Companies, or Bodies Politic, their respective commo
on the several days annexed to their respective signatures or seals.

IV.

FORMS RELATING TO PLEADINGS.

I. *Statutory Form of a Declaration in Debt, for Calls made on*
by a Railway Company.

II. *Declaration in Assumpsit, by Vendor against Vendee.*

1st, 2nd, & 3rd Counts—for not accepting Scrip Shares in
way Company established by Act of Parliament.

4th Count—for not accepting Scrip Shares in a Projected C

5th Count—for not accepting Registered Shares in a Compa
blished by Act of Parliament.

6th. Indebitatus Count for Shares sold.

III. *Another Form of Declaration in Assumpsit by Vendor against Vendee, for not accepting Registered Shares in a Company established by Act of Parliament.*

IV. *Declaration by a Broker against his Customer, for not accepting Shares bought by the Broker for his Customer.*

V. ——— *by Broker against Vendee, for not accepting Scrip Shares.*

VI. ——— *by Vendor against Vendee, for not accepting Scrip, the Scrip having been sold before it was issued.*

VII. ——— *by Vendee against Vendor, for not delivering Scrip Certificates.*

VIII. ——— *against a Railway Company, for leaving the door of a railway carriage open, whereby the plaintiff's wife was injured.*

I. *Statutory Form of Declaration in Debt by a Railway Company for Calls made on Shares,* (8 & 9 Vict. c. 16, s. 26, ante App., 90).

I. Statutory Form of Declaration to recover calls.

[*Commencement in debt in the usual form.*]—For that whereas the defendant, before and at the time of the commencement of this suit, to wit, on the —— day of ——, 18—, was and still is the holder of twenty shares in the said ——— Railway Company, and at the time of the commencement of this suit was, and still is, indebted to the plaintiffs in the sum of £100, for one call of the sum of five pounds, upon each of the said twenty Shares theretofore, to wit, on the —— day of ——, 18—, duly made by the said Company; and by reason of the said sum of £100 being and remaining wholly unpaid to the plaintiffs, and by virtue of a certain act of Parliament made and passed in a Session of Parliament held in the eighth and ninth years of the reign of Her Majesty Queen Victoria, intituled "An Act for consolidating in one Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a public nature," and also by virtue of a certain other act of Parliament made &c. [*here refer to the title of the special act*], an action hath accrued to the plaintiffs to demand and have of and from the defendant the said sum of £100 above demanded; yet the defendant hath not paid the said sum above demanded, or any part thereof, to the said plaintiffs, to the damage of the plaintiffs of £—— [*here insert a sum sufficient to cover the interest due: See the Southampton Dock Company* v. *Richards*, 1 Man. & G. 448], and therefore they bring their suit &c.

For forms of a declaration for calls, stating the facts specially, see *The Great North of England Railway Co.* v. *Biddulph*, 7 M. & W. 243; *The Aylesbury Railway Co.* v. *Mount*, 2 Railway Cases, 679, S.C.; in error, 3 Railway Cases, 469; and the cases cited ante, 130, in the text, notes (*c*) and (*d*).

II. *Declaration in Assumpsit by Vendor against Vendee.*

1*st*, 2*nd*, & 3*rd Counts—for not accepting Scrip Shares in a Railway Company established by Act of Parliament.*

4*th Count—for not accepting Scrip Shares in a Projected Company.*

5*th Count—for not accepting Registered Shares in a Company established by Act of Parliament.*

6*th. Indebitatus Count for Shares sold.*

1st, 2nd, & 3rd Counts—for not accepting Scrip Shares in a Company established by Act of Parliament.

In the Common Pleas:

1st day of January, 1847.

——, to wit. A. B., the plaintiff in this suit, by C. D., his attorney, complains of E. F., the defendant in this suit, who has been summoned to answer

the plaintiff in an action on promise
time of the making of the several pro
counts of the declaration hereinafter
and in a certain public joint-stock u
way, mentioned in and authorised by
vided, which said shares were called
times of the making of the said seve
ferable. And whereas heretofore, to
the defendant agreed to buy, and th
fendant, agreed to sell to the defe
shares, at and for a certain price, t
every of the said ten shares, the said
by the plaintiff to the defendant with
ing, and to be paid for as aforesaid on
to wit, at the time aforesaid, in conside
the request of the defendant, then pr
the said last-mentioned shares within
the defendant promised the plaintiff to
tiff for the same as aforesaid. And the
able time then next following, to wit
and was then ready and willing to deliv
whereof the defendant then had notice,
to accept the same, and to pay him for t
disregarding his said promise, did not
aforesaid, or within a reasonable tim
elapsed), or at any time, accept the sai
or pay for the same or any of them, bu
accept or pay for the same, and the
wholly unpaid to the plaintiff. An
the —— day of ——, 18—, the defen
at the request of the defendant, agree
twenty other of the said shares of and
count mentioned, at and for a certain
each and every of the said ten shares,
livered by the plaintiff to the defendant
lowing, and to be paid for as aforesaid o
to wit, at the time last aforesaid, in con
at the request of the defendant, then p
the said last-mentioned shares within
the defendant promised the plaintiff to
same as last aforesaid. And the plainti
then next following, to wit, on the day
then ready and willing to deliver the sa
ant, whereof the defendant then had
plaintiff to accept the same, and to p
the defendant, disregarding his said
would, when he was so requested as
afterwards, (which hath long since elaps
mentioned shares, or any of them, or
then wholly and absolutely refused to a
price thereof remains and is still wholl
also heretofore, to wit, on the ——
agreed to buy, and the plaintiff, at the
to the defendant divers, to wit, twenty
said undertaking in the said first and se
and for a certain price, to wit, the pric
said last-mentioned twenty shares, the
vered by the plaintiff to the defendant
lowing, and to be paid for as aforesaid on

to wit, at the time last aforesaid in consideration thereof, and that the plaintiff, at the request of the defendant, then promised the defendant to deliver to him the last-mentioned twenty shares within a reasonable time then next following, the defendant promised the plaintiff to accept the same, and to pay the plaintiff for the same as last aforesaid. And the plaintiff says, that he, within a reasonable time then next following, to wit, on the day and year last aforesaid, offered and was then ready and willing to deliver the said last-mentioned shares to the defendant, whereof the defendant then had notice, and was then requested by the plaintiff to accept the same, and to pay him for the same as aforesaid; yet the defendant, disregarding his said last-mentioned promise, did not nor would, when he was so requested as aforesaid, or within a reasonable time afterwards, (which hath long since elapsed), or at any time, accept the said last-mentioned twenty shares, or any of them, or pay for the same or any of them, but then wholly and absolutely refused to accept or pay for the same, and the said price thereof remains and is still wholly unpaid to the plaintiff. And whereas also, before and at the time of the making of the promise by the defendant next hereinafter mentioned, a certain public joint-stock company had been formed, to wit, a certain company for the purpose of making a certain railway, to be called The ——— Railway, under the authority and provisions of an act of Parliament to be applied for in that behalf, by means of a capital joint-stock or fund, to be divided into and consist of certain shares, to be transferable without the express consent of all the copartners in the said company, the profits of and from which said undertaking were to be divided rateably amongst the holders of such shares for the time being, according to the number thereof by them respectively held. And whereas promises of and rights to such shares, had been distributed and allotted to and amongst divers persons as such interested holders thereof, who thereupon and thereby became and were respectively possessed of rights and interests in expectancy to and in such number of shares of and in the said undertaking as had been so allotted to them respectively as aforesaid. And whereas such rights and interests were at the time of the said promise next hereinafter mentioned transferable, to wit, by the delivery of certain documents called scrip certificates, relating to and evidencing such rights and interests as aforesaid in the respective holders thereof to, and intitling such respective holders thereof to such numbers of shares of and in the said undertaking as in such documents respectively mentioned in that behalf. And whereas heretofore, to wit, on the —— day of ——, 184 , the defendant agreed to buy, and the plaintiff, at the request of the defendant, agreed to sell to the defendant such rights and interests of, to, and in thirty shares of the said last-mentioned undertaking, at and for a certain rate or price, to wit, the rate or price of 9*l.* for and in respect of each and every of the said thirty shares, the documents relating to and evidencing such rights and interests to and in the said last-mentioned shares to be delivered by the plaintiff to the defendant within a reasonable time then next following, and the amount of the said last-mentioned prices to be paid by the defendant to the plaintiff on such delivery thereof; and thereupon, then, to wit, at the time last aforesaid, in consideration thereof, and that the plaintiff, at the request of the defendant, then promised the defendant to deliver to him such documents as last aforesaid within a reasonable time then next following, the defendant promised the plaintiff to accept the same, and to pay him the amount of the said last-mentioned prices as aforesaid. And the plaintiff says that he, within a reasonable time then next following, to wit, on the day and year last aforesaid, offered, and was then ready and willing, to deliver such documents as last aforesaid to the defendant, whereof the defendant then had notice, and was then requested by the plaintiff to accept the same, and to pay him the amount of the last-mentioned prices as aforesaid. Yet the defendant, disregarding his said last-mentioned promises, did not nor would, when he was so requested as aforesaid, or within a reasonable time afterwards (which hath long since elapsed) or at any time, accept such documents as last

4th Count. For not accepting scrip shares in a projected railway.

APPENDIX.

FORMS,

Relating to Pleadings.

5th Count. For not accepting registered shares.

aforesaid, or any of them, or pay the amount of the said last-mentione
or any part thereof, to the plaintiff, but then wholly and absolutely r
to do, and the amount of the said last-mentioned prices remains and
wholly unpaid to the plaintiff. And whereas also heretofore, to
the —— day of ——, 1845, the defendant agreed to buy, and th
tiff, at the request of the defendant, agreed to sell to the defendant, d
wit, twenty-one registered shares, of and in a certain public joint-stoc
taking, called "The ——— Railway," mentioned in and authoris
statutes in such case made and provided, at and for a certain price, to
price of 23*l.* 10*s.* for each and every of the said twenty-one shares,
last-mentioned shares to be transferred by the plaintiff to the defend
a reasonable time then next following, and to be paid for as aforesaid
transfer thereof; and thereupon then, to wit, at the time aforesaid,
sideration thereof, and that the plaintiff, at the request of the defend
promised the defendant to transfer to him the said last-mentione
within a reasonable time then next following, the defendant promis
cept such transfer thereof, and to pay the plaintiff for the said last-m
shares as aforesaid. And the plaintiff says that he, within a reason
then next following, to wit, on the day and year aforesaid, offered,
then ready and willing duly to transfer the said shares to the defendant
the defendant then had notice, and was then requested by the plaintiff
such transfer, and to pay him for the said last-mentioned shares as
Yet the defendant, disregarding his said last-mentioned promise, did
would when he was so requested as aforesaid, or within a reason
afterwards (which hath long since elapsed), or at any time, accept su
fer of the said last-mentioned shares, or any of them, or pay for the
any of them, but then wholly refused so to do, and then wholly an
fully discharged the plaintiff from transferring the same, and the sa

Indebitatus Count.

thereof remain and are still wholly unpaid to the plaintiff. And wh
the defendant, on the —— day of ——, was indebted to the plaintiff
for the price and value of scrip certificates of shares of and in divers ra
dertakings, projects, and public joint-stock companies, and being of gr
to wit, of the said value of 2000*l.*, before then bargained and sold by th
to the defendant at his request, and in 2000*l.* for money found to be
the defendant to the plaintiff on an account before then stated betwe
and thereupon the defendant afterwards, to wit, on the day and
aforesaid, in consideration of the last-mentioned premises respectiv
mised the plaintiff to pay him the said last-mentioned two several
money respectively on request; yet the defendant hath disregarde
last-mentioned promise, and hath not paid the said last-mentioned
money or either of them, or any part thereof; to the plaintiff's d
2000*l.*, and therefore he brings suit, &c.

Particulars.

In the Common Pleas:

A. B. *v.* E. F.

This action is brought to recover 351*l.* 7*s.* 6*d.*, the balance due
defendant to the plaintiff, for shares and interests in ——— Railway
the plaintiff to the defendant, as follows, viz., &c. [*Here insert the*

III. *Another Form of Declaration in Assumpsit by Vendor Vendee, for not accepting Registered Shares in a Compar lished by Act of Parliament.*

For that whereas, after the passing of the act of Parliament, m
passed in the session of Parliament held in the 8th and 9th years of
of her present Majesty Queen Victoria, intituled an act for making
from —— to ——, with branches therefrom, to wit, on the 6th da

tember, A.D. 1845, it was agreed between the plaintiff and the defendant, that the plaintiff should, within a reasonable time in that behalf after the making of the said agreement, cause to be transferred to the defendant twenty shares in the undertaking in the said act mentioned, and that the defendant should within such reasonable time accept such shares, and pay the plaintiff for the same after the rate of 23*l.* 10*s.* per share. And the said agreement being so made as aforesaid, afterwards, to wit, on the day and year hereinbefore mentioned as the day and year of the making thereof, in consideration that the plaintiff, at the request of the defendant, had then promised the defendant to perform and fulfil the said agreement in all things on his part to be performed and fulfilled, the defendant then promised the plaintiff to perform and fulfil the said agreement in all things on the defendant's part to be performed and fulfilled; and the plaintiff says that he was always ready and willing to perform and fulfil, and has performed and fulfilled, the said agreement in all things on his part to be performed and fulfilled, of all which premises the defendant always had notice and knowledge. And the plaintiff says that after the making of the said agreement, and before the commencement of this suit, a reasonable time elapsed for the defendant to accept and pay for the said shares. And whereas the plaintiff was always, from the time of the making of the said agreement, ready and willing to cause the said shares to be transferred to the defendant, upon and according to the terms of the said agreement, and to cause to be executed to the defendant in due form of law a deed of transfer of the said shares to the defendant, of all which premises the defendant always had notice, yet the defendant hath not paid the said price so agreed on to be paid for the said shares, but hath always neglected and refused, and still doth neglect and refuse so to do, by reason whereof the plaintiff has lost the benefit of the said agreement, and a large sum of money, to wit, 1000*l.*, by reason of the said shares having become and being diminished in value.

IV.—*Declaration by a Broker against his Customer, for not accepting Shares bought by the Broker for his Customer.*

For that whereas heretofore, to wit, on the 20th day of ——, 1845, in consideration that the plaintiff, at the request of defendant, would purchase for and on behalf of the said defendant, and on the personal responsibility and credit of the said plaintiff, divers, to wit, fifty shares of and in a certain company or undertaking, to wit, the B—— and H—— Railway Company, for and upon certain terms, and at and for certain prices, to wit, the terms and prices hereinafter in that behalf hereinafter respectively mentioned, and to be paid for on, to wit, the 30th September, 1845, he the said defendant then promised the said plaintiff, amongst other things, to provide money for the payment of the said shares and the said prices thereof respectively on the said 30th day of September, 1845, and save harmless the said plaintiff from any loss or damage for or by reason of any such purchase; and the said plaintiff says, that thereupon afterwards, and relying upon the said promise of the said defendant, he the said plaintiff did afterwards, to wit, on the day and year aforesaid, for and on behalf of the said defendant, and on the personal responsibility and credit of the said plaintiff, purchase of certain persons, that is to say, C. F. C. and E. C., divers, to wit, thirty-five, being parcel of the said fifty shares in the aforesaid railway company, at and for the price of 5*l.* 10*s.* for each and every of such shares, nett, and to be paid for on the 30th day of September aforesaid; and also divers, to wit, fifteen, being the residue of the said fifty shares, of certain persons, to wit, J. F. and J. A., at or for the price, to wit, of 5*l.* 7*s.* 6*d.* for each and every of such shares nett, and to be paid for on the 30th day of September aforesaid; yet the said plaintiff says, that, although the said C. F. C. and E. C. and the said J. F. and J. A. were, to wit, at the time of the making the said purchases respectively, and on the 30th day of September aforesaid, and for a reasonable time afterwards, respectively, ready and willing, and on,

APPENDIX. FORMS. *Relating to Pleadings.*

5th Count. For not accepting registered shares.

aforesaid, or any of them, or pay the amount of the said last-mentioned p
or any part thereof, to the plaintiff, but then wholly and absolutely refus
to do, and the amount of the said last-mentioned prices remains and is
wholly unpaid to the plaintiff. And whereas also heretofore, to wit
the —— day of ——, 1845, the defendant agreed to buy, and the
tiff, at the request of the defendant, agreed to sell to the defendant, dive
wit, twenty-one registered shares, of and in a certain public joint-stock u
taking, called "The ——— Railway," mentioned in and authorised b
statutes in such case made and provided, at and for a certain price, to wi
price of 23*l.* 10*s.* for each and every of the said twenty-one shares, th
last-mentioned shares to be transferred by the plaintiff to the defendant
a reasonable time then next following, and to be paid for as aforesaid, on
transfer thereof; and thereupon then, to wit, at the time aforesaid, in
sideration thereof, and that the plaintiff, at the request of the defendant,
promised the defendant to transfer to him the said last-mentioned s
within a reasonable time then next following, the defendant promised
cept such transfer thereof, and to pay the plaintiff for the said last-ment
shares as aforesaid. And the plaintiff says that he, within a reasonable
then next following, to wit, on the day and year aforesaid, offered, an
then ready and willing duly to transfer the said shares to the defendant, w
the defendant then had notice, and was then requested by the plaintiff to
such transfer, and to pay him for the said last-mentioned shares as afor
Yet the defendant, disregarding his said last-mentioned promise, did no
would when he was so requested as aforesaid, or within a reasonable
afterwards (which hath long since elapsed), or at any time, accept such
fer of the said last-mentioned shares, or any of them, or pay for the sa
any of them, but then wholly refused so to do, and then wholly and w
fully discharged the plaintiff from transferring the same, and the said

Indebitatus Count.

thereof remain and are still wholly unpaid to the plaintiff. And whereas
the defendant, on the —— day of ——, was indebted to the plaintiff in 2
for the price and value of scrip certificates of shares of and in divers railwa
dertakings, projects, and public joint-stock companies, and being of great
to wit, of the said value of 2000*l.*, before then bargained and sold by the pl
to the defendant at his request, and in 2000*l.* for money found to be due
the defendant to the plaintiff on an account before then stated between t
and thereupon the defendant afterwards, to wit, on the day and yea
aforesaid, in consideration of the last-mentioned premises respectively,
mised the plaintiff to pay him the said last-mentioned two several su
money respectively on request; yet the defendant hath disregarded hi
last-mentioned promise, and hath not paid the said last-mentioned su
money or either of them, or any part thereof; to the plaintiff's dama
2000*l.*, and therefore he brings suit, &c.

Particulars.

In the Common Pleas:

A. B. *v.* E. F.

This action is brought to recover 351*l.* 7*s.* 6*d.*, the balance due fro
defendant to the plaintiff, for shares and interests in ——— Railways s
the plaintiff to the defendant, as follows, viz., &c. [*Here insert the ite*

III. *Another Form of Declaration in Assumpsit by Vendor ag
Vendee, for not accepting Registered Shares in a Company
lished by Act of Parliament.*

For that whereas, after the passing of the act of Parliament, made
passed in the session of Parliament held in the 8th and 9th years of the
of her present Majesty Queen Victoria, intituled an act for making a ra
from —— to ——, with branches therefrom, to wit, on the 6th day of

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d shares, at the rate
his said promise, and
resaid, or at any other
any or either of them,
ny or either of them, at
r, but has hitherto wholly
eof the plaintiff has been
and advantage of the price
g to a large sum of money,

to wit, the day and year last aforesaid, respectively offered to sell and de
the said several shares respectively, pursuant to the said respective contra
purchase, and although a reasonable time for so doing had elapsed afte
said 30th day of September, and before the commencement of this suit,
which the said defendant, from the time of the making of the said respe
purchases continually, to the commencement of this suit, has had notice
the said defendant, disregarding his said promise, did not nor would pa
money for the payment of the said respective shares as aforesaid, or the
respective prices thereof, or any of them, or any part thereof, on the said
day of September aforesaid, or at any time before or since, or save har
the said plaintiff from any loss or damage for or by reason of such respe
purchases as aforesaid, or either of them, but then and from thence hit
hath wholly neglected and refused so to do, by means and in consequ
whereof the said plaintiff was afterwards, to wit, on the said 30th day of
tember aforesaid, called upon by and forced and obliged to pay to the
C. F. C. and E. C. a certain large sum of money, to wit, the sum of 3
and then became, and was and still is, liable to pay to the said J. F. and J
carrying on business under the firm of F. and A., a certain other large su
money, to wit, the sum of 500*l.* for and on account of the said shares so
by them as aforesaid; and by means of the premises the said plaintiff has
and is damaged to the amount thereof, and by means and in consequ
whereof the said plaintiff was afterwards, to wit, on the said 30th day of
tember aforesaid, called upon by and forced and obliged to pay to the
J. F. and the said J. A. a certain large sum of money, to wit, the sum of
and then became, and was and still is, liable to pay to the said J. F. an
said J. A. a certain other large sum of money, to wit, the sum of 200
and on account of the said shares so sold by them as aforesaid, and by
means of the premises the said plaintiff hath been and is damaged to
amount thereof.

V. *Declaration by Broker against Vendee, for not accepting S Shares.*

For that whereas, before and at the times of the making of the bar
agreements, and promises hereinafter in this count mentioned, the plai
then and still being a share broker, was possessed of divers scrip certific
to wit, scrip certificates of fifty shares in the Great Northern Railway C
pany, which scrip certificates had been theretofore delivered to the pla
by one J. A., and then, by and with the assent of the said J. A., rem
and were in the possession of the plaintiff, for the purpose of being so
the plaintiff for the benefit of the said J. A., then being the owner thereo

And whereas, also, heretofore, to wit, on the —— day of ——, A. D. 1
the defendant bargained for and agreed to buy of the plaintiff, who the
the request of the defendant, agreed to sell to the defendant, the said
certificates, at a reasonable rate and price then agreed upon between t
to wit, at the rate and price of 4*l.* 2*s.* 6*d.* per share, to be paid by th
fendant to the plaintiff, on the delivery by the plaintiff to the defenda
the said scrip certificates, and the said scrip certificates to be delivere
the plaintiff to the defendant within a reasonable time in that behalf;
thereupon afterwards, to wit, on the day and year last aforesaid, in
sideration of the premises, and that the plaintiff, at the request of
defendant, had then promised the defendant to deliver the said scrip
tificates to the defendant within a reasonable time in that behalf, th
fendant promised the plaintiff to accept the said scrip certificates, an
pay the plaintiff for the same on such delivery, at the rate and price a
said; and although a reasonable time for the delivery, accepting, and pa
for the said scrip certificates elapsed before the commencement of this

and although the plaintiff, within and during a reasonable time in that behalf, and before the commencement of this suit, to wit, on the 15th day of October, in the year of our Lord 1845, was ready and willing, and then tendered and offered, to deliver the said scrip certificates to the defendant, and then requested the defendant to accept the same, and to pay him for the same as aforesaid; yet the defendant did not, nor would then or at any other time, accept the said scrip certificates, or any of them, or pay the plaintiff for the same, or any of them, at the rate and price aforesaid, or otherwise howsoever, and then wholly refused so to do, and the same scrip certificates are, and still remain, wholly unaccepted, and the price, at the rate aforesaid, amounting in the whole to a large sum of money, to wit, the sum of 206*l.* 5*s.* is, and still remains, wholly unpaid; by means whereof the plaintiff has been deprived of the same sum of money, and of divers gains and profits, amounting in the whole to a large sum of money, to wit, the sum of 50*l.*, which might and otherwise would have accrued to him for commission and reward on the sale of the said scrip certificates, and has necessarily paid with his own moneys to the said J. A. a large sum of money, to wit, the sum of 206*l.* 5*s.* for and in respect of the sale so bargained for and agreed as aforesaid.

VI. *Declaration by Vendor against Vendee for not accepting Scrip, the Scrip having been sold before it was issued.*

For that whereas, heretofore, to wit, on the 5th day of August, A.D. 1845, the defendant bargained for and agreed to buy of the plaintiff, who then, at the request of the defendant, agreed to sell to the defendant, divers, to wit, fifty shares in a certain railway company, to wit, the H—— H—— and B—— Railway Company, at a certain rate and price then agreed upon between them, to wit, the rate and price of 12*l.* 2*s.* per share, the said shares to be delivered by the plaintiff to the defendant within a reasonable time after the scrip of the said shares should be issued by the said company, and the said price of the said shares to be paid by the defendant to the plaintiff on the delivery of the said scrip thereof to the defendant as aforesaid. And thereupon, in consideration of the premises, and that the plaintiff, at the request of the defendant, had then promised the defendant to deliver the said scrip of the said shares to the defendant within a reasonable time after the same scrip should be issued by the said company, the defendant then, to wit, on the day and year last aforesaid, promised the plaintiff to accept the said scrip of the said shares of and from the plaintiff, and to pay the plaintiff for the said shares at the said rate and price on such delivery of the said scrip thereof to the defendant as aforesaid. And the plaintiff, in fact, says, that afterwards, to wit, on the 1st day of September, A.D. 1845, the scrip of the said shares was issued by the said company, and although the plaintiff, within a reasonable time afterwards, and before the commencement of this suit, to wit, on the 5th day of September, A.D. 1845, was ready and willing, and then tendered and offered to deliver the said scrip of the said shares to the defendant, and then requested the defendant to accept the same scrip of the said shares, and to pay him, the plaintiff, for the said shares, at the rate and price aforesaid, yet the defendant disregarded his said promise, and did not, nor would when he was so requested as aforesaid, or at any other time, accept the said scrip of the said shares, or any or either of them, or pay him, the plaintiff, for the said shares, or any or either of them, at the rate and price aforesaid, or otherwise howsoever, but has hitherto wholly neglected and refused so to do, by means whereof the plaintiff has been wholly deprived of the possession, use, benefit, and advantage of the price of the said shares, at the rate aforesaid, amounting to a large sum of money, to wit, the sum of 605*l.*

VII. *Declaration by Vendee against Vendor, for not delivering Sc Certificates.*

For that whereas, before and at the time of the making of the promis undertaking of the defendants hereinafter mentioned, a certain compan been and was constituted, to wit, provisionally, for the purpose of a certain posed undertaking, that is to say, for executing certain railways which cou be carried into execution without obtaining the authority of Parliament, a obtaining an act of Parliament on that behalf, and the same compan been and then was duly registered provisionally according to law, an same company then was commonly known as the South Midland Ra Company; and thereupon heretofore, to wit, on the 1st day of May, A.D. the plaintiff, at the special instance and request of the defendants, barg and agreed with the defendants to buy of them, and the defendants then to the plaintiff, the scrip certificates for divers, to wit, one hundred shares o in the said proposed undertaking, at a certain rate or price, to wit, at the or price of 4*l.* 18*s.* for and in respect of each and every such shares, the scrip certificates to be delivered by the defendants to the plaintiff at a ce time, to wit, on the 31st day of August, A.D. 1845; and in consider thereof, and that the plaintiff, at the like special instance and request o defendants, had then promised the defendants to accept and receive the scrip certificates, and to pay them for the same at the rate or price afore they the defendants undertook and then promised the plaintiff to delive said scrip certificates to the plaintiff as aforesaid; and the plaintiff avers, although the time for the delivery by the defendants to the plaintiff of the scrip certificates, to wit, the said 31st day of August, A.D. 1845, elapsed before the commencement of this suit, and although the plaintiff was al from the time of the making of the said promise and undertaking o defendants, until and upon the said 31st day of August, A.D. 1845, and wards, ready and willing to accept and receive the said scrip certificates to pay for the same at the rate or price aforesaid, whereof the defendants wards, to wit, on the day and year last aforesaid, had notice; yet the de ants, not regarding their said promise and undertaking, but contriving intending to deceive and defraud the plaintiff in this behalf, did not nor on the said 31st day of August, A.D. 1845, deliver to the plaintiff the scrip certificates, or any or either of them, but wholly neglected and re so to do, nor have they at any time delivered the same, or any or eith them, to the plaintiff, whereby the plaintiff hath lost and been depriv divers great gains and profits which might and otherwise would have and accrued to him from the delivery to him of the said scrip certificat bargained for and bought by him as aforesaid, to the plaintiff's damage,

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VIII. *Declaration against a Railway Company for leaving the of a Carriage open, whereby the Leg of the Plaintiff's Wif broken.*

On the 5th day of November, A.D. 1846. H—H—and Elizabeth, his wif plaintiffs in this suit, by W—F—, their attorney, complain of the E— Railway Company, the defendants in this suit, who have been summoned t swer the plaintiffs in an action on the case. For that whereas the said com before and at the time of the committing of the grievances hereinafter menti were the owners and proprietors of a certain railway, called, to wit, the E— Railway, and of certain carriages used by them for the carriage and conve of passengers, cattle, goods and chattels, in, upon, and along the said rai from a certain place, to wit, L——, to a certain other place, to wit, C— the county of E——, and from the said last-mentioned place, to wit, aforesaid, to L—— aforesaid, for hire and reward to them the company i

behalf; and the company being owners and proprietors of the said railway and the said carriages for the purpose aforesaid, the plaintiffs, heretofore and before the committing of the grievances hereinafter mentioned, and before the commencement of this suit, to wit, on the 31st day of June, A.D. 1846, at the request of the company, became and were passengers in one of the carriages of the said company, to be by them safely and securely carried and conveyed thereby on a certain journey, to wit, from R——, in the county of E——, to L—— aforesaid, and to be put down at one of the usual stations or stopping-places of the trains of the said company, to wit, at M——E—— station there, for certain reasonable reward to the company in that behalf; and the company then received the plaintiffs as such passengers as aforesaid, and thereupon it became and was the duty of the company to use due and proper care, diligence, and skill, in and about the carrying and conveying the plaintiffs on the said journey, and in and about the setting down, depositing, and putting down the plaintiffs at the end of their said journey at the usual station and place of the stopping for the said trains at M——E—— as aforesaid, and in the management of the train of carriages, in one of which the plaintiff Elizabeth—— was a passenger as aforesaid, after the said plaintiff should have gotten out of the said carriage; yet the company, not regarding their duty in that behalf, did not nor would use due and proper care, diligence, and skill in and about the carrying and conveying of the plaintiffs on their said journey, and in and about the putting down the plaintiffs at the end of their said journey as aforesaid, to wit, at M——E—— as aforesaid, but took so little care, and so negligently and unskilfully conducted themselves, in and about carrying and conveying the plaintiffs on their said journey, and in and about the putting down the plaintiffs at the end of their said journey there, to wit, at the M——E—— station as aforesaid, and in conducting, managing, and directing the train of carriages, in one of which the plaintiff Elizabeth was such passenger as aforesaid, after the said plaintiff Elizabeth had gotten out of the said carriage, and the engine thereof, whereby the said train was drawn upon and along the company's said railway, that, by reason of such want of care, diligence, and skill of the company, the door or flap of one of the said carriages was carelessly and negligently left open by the servants of the said company, and the said train being too hastily and carelessly and improperly moved on and propelled by the engine attached thereto by the servants of the said company, while the said door or flap of the said carriage remained open as aforesaid, and before a reasonable time had elapsed to allow the plaintiff Elizabeth to walk a reasonable and safe distance from the said carriage, the plaintiff Elizabeth, by reason of the moving on of the said train as aforesaid, was then, to wit, on the day aforesaid, struck by a portion of the said carriage in its motion, and thereby then thrown and cast with great force and violence against the wall of the said railway, and on the ground thereof, and was then grievously bruised, wounded, and injured, and one of her legs then became broken and crushed; and also, by means of the premises, the plaintiff Elizabeth became and was very sick, weak, and disordered, and remained and continued so weak and disordered for a long time, to wit, from the time of the committing of the grievances hereinbefore mentioned hitherto, during which time she suffered great pain, and anguish of mind and body, and was obliged and compelled to have her said leg cut off, amputated and removed, to the damage of the said H—— H——, and Elizabeth his wife, of 2000*l.*, and thereupon they bring suit, &c.

Declaration against a Railway Company for not carrying the Plaintiff safely.—(See *Carpue* v. *The London and Brighton Railway Company*, 3 Railway Cases, 692; 13 Law Journal, N. S., Q. B., 133.)

Declaration against a Railway Company, as common Carriers, for not delivering perishable Goods in due Time.—(See *Pickford* v. *The Grand Junction Railway Company*, 12 M. & W. 766.)

APPENDIX. FORMS. *Relating to Compensation.*

A similar Declaration for refusing to carry Goods.—(See *Pic The Grand Junction Railway Company*, 8 M. & W. Railway Cases, 592.)

Declaration in Debt against a Railway Company, to recove pensation Money assessed by a Jury.—(See *Corregal* v. *The and Blackwall Railway Company*, 5 M. & G. 250; 3 R Cases, 411; see ante, 465, in the text of this work.)

Declaration in Assumpsit for not delivering Scrip Certificate Plaintiff, in Exchange for a Letter of Allotment and I Receipt.—(See *Walstab* v. *Spottiswoode*, 15 Law Journa Exch., 193, ante in the text, 678.)

Mandamus to compel a Railway Company to issue a Warra Sheriff to summon a Jury to assess Compensation.—(See *The Eastern Counties Railway Company*, 2 Railway Case

Mandamus to compel a Railway Company to make Watering Pl Cattle, on Lands intersected by the Railway.—(See *Reg. York and North Midland Railway Company*, 14 Law J Q. B., 277, ante, 396, in the text.)

V. FORMS RELATING TO COMPENSATION.

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in

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APPENDIX.

FORMS.
Relating to Compensation.

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*No. 25.—Appointment of two Surveyors to determine the A
Purchase-Money or Compensation to be paid for Lands p
from Parties under any Disability or Incapacity.* (8 &
18, *s.* 9; ante, App., 120.)

To all to whom these presents shall come, The —— Railway C
incorporated by an act of Parliament intituled the —— Railw
184—, and A. B. [*the tenant for life or other party under disab*
&c., send greeting: Whereas, by virtue of the above-mentione
Parliament, and of the act or acts of Parliament incorporated there
above-named railway company are authorised to purchase and take
purposes of the said railway, the several pieces or parcels of land
or referred to in the schedule hereunder written, and the said railw
pany have given due notice of their intention to take the lands for the
aforesaid, to the parties interested in the said lands. And wh
the last will and testament of —— deceased, bearing date the -
of ——, the said pieces or parcels of land, together with oth
ditaments, stand limited to the use of the said A. B. for his life
impeachment of waste, with divers remainders over: [*This recital
according to the circumstances of each case*]: Wherefore, accordin
provisions contained in the Lands Clauses Consolidation Act, 1
same being one of the acts incorporated with the said —— Railw
184—), it is requisite that the purchase-money or compensation to b
the purchase of [*or add*, and for any permanent damage and injur
said pieces or parcels of land and hereditaments, shall not be less t
be determined by the valuation of two able practical surveyors, o
nominated by the said company, and the other by the said A. B.
therefore, be it known, that, in pursuance of and in obedience to the
of the said act or acts of Parliament in this behalf, the said ——
Company do hereby nominate on their behalf C. D., of —— &c.
practical surveyor, and the said A. B. doth hereby nominate on hi
E. F., of &c., an able practical surveyor, to be the two surveyors
purpose of determining by their valuation, the amount of * the pu
compensation money to be paid by the said company for the pur
them in fee simple in possession, of the said pieces or parcels of

scribed or referred to in the said schedule hereunder written, and the appurtenances thereto belonging: [*If the lands are severed from other lands, then add*, and also for the purpose of determining the amount of the compensation money to be paid by the said company, by reason of the severing the said pieces or parcels of land from the other lands of the said A. B. adjacent thereto]: In witness whereof the said company have affixed their common seal, and the said A. B. has set his hand, to these presents, this —— day of ——, A. D. 18—

The schedule above referred to.

All, &c. [*the description of the lands, &c.; see ante*, 185, *in the text.*]

No. 26.—Notice of Intention to apply to two Justices to appoint a third Surveyor. (8 & 9 *Vict. c.* 18, *s.* 9; ante, App. 120).

To A. B. [*the tenant for life, &c.*]

This is to give you notice, that C. D. and E. F., the two surveyors who, by a certain instrument in writing, bearing date the —— day of —— now last past, to which the common seal of The —— Railway Company, incorporated by the —— Railway Act, 18— is attached, and your signature is affixed, were nominated, for the purpose of determining by their valuation the purchase-money or compensation &c. [*here shortly recite the contents of the nomination*], cannot agree in the valuation, to make which they were nominated as aforesaid: And therefore the said —— Railway Company, in pursuance of the power for this purpose given in the Lands Clauses Consolidation Act, 1845, intend to apply on the —— day of —— now next ensuing, to two of her Majesty's justices of the peace, assembled and acting together at &c., to nominate a third surveyor to determine all and every the matters by the said instrument in writing, referred to the determination of the said C. D. and E. F. Dated the —— day of ——, 18—.

(Signed) *A. B.*, Secretary of the —— Railway Company.
[*or, H. W. & I. K.* two Directors of the —— Railway Company.]

No. 27.—Nomination of a Surveyor by two Justices to determine a Question of Compensation where the two Surveyors appointed by the Parties cannot agree. (8 & 9 *Vict. c.* 18, *s.* 9; ante, App. 120.)

To all to whom these presents shall come, We, ——, of &c., and —— of &c., two of her Majesty's justices of the peace acting in and for the county of ——, send greeting: Whereas, by a certain appointment in writing, bearing date on [*recite the appointment of the two surveyors*]: And whereas the above-mentioned C. D. and E. F. cannot agree as to the amount of the purchase-money or compensation to be paid for the said pieces or parcels of land, whereupon application was made to us by the said —— Railway Company [*or*, by the said A. B.] to make such nomination of a surveyor as is hereinafter expressed, which we have consented to do: Now, therefore, be it known, that, in pursuance of and obedience to the provisions contained in the Lands Clauses Consolidation Act, 1845, in this behalf, and we the said justices having received proof satisfactory to us that the said C. D. and E. F. cannot agree in the valuation of the said pieces or parcels of land in the said hereinbefore-recited appointment, bearing date the —— day of ——, mentioned, and that due notice in writing of the making of this application has been given by the said company to the said A. B. [*or*, by the said A. B. to the said company, *as the case may be*], do, by this writing under our respective hands,

APPENDIX. FORMS. *Relating to Compensation.*

nominate —— of &c., an able practical surveyor, to determine by ation the amount of [*here proceed from * in the precedent, N the end*]: In witness whereof we the said [*justices*] have respec our hands to these presents, this —— day of ——, 18—.

No. 28.—*Valuation made by two Surveyors,* (*a*) *of Lands take chased from Parties under any Disability or Incapacity. Vict. c.* 18, *s.* 9 ; ante, App., 120).

Be it remembered, that we, C. D. and E. F., of &c., the two surv by an instrument in writing bearing date the —— day of —— last, w nated, I the said C. D., by and on behalf of the —— Railway Comp porated by the —— Railway Act, 18—, and I the said E. F., by and of A. B., of —— &c., the tenant for life of the lands hereinafter descri *case may be*] to determine by our valuation the purchase-money or com to be paid by the said company, for and in respect of the pieces or parc hereinafter described, do declare, that we the said C. D. and E. F., hav the same pieces or parcels of land [*or*, having ascertained the perma age which hath been and will be occasioned to such lands and to adja and property belonging to the said A. B. by the said railway], are o and accordingly do by this our valuation in writing determine, sum of £—— is the value and shall be paid by the said compa purchase by them in fee simple in possession, free from all incu except the land-tax and tithe commutation rent-charge, of the piec cels of land described or referred to in the schedule hereunder wr the appurtenances to the same premises belonging or in anywi taining, [*or*, that the sum of £—— is the compensation-money, be paid by the said company for or in respect of permanent da injury which hath been and will be occasioned to the said lands and adjacent thereto and belonging to the said A. B. by the said railwa formation thereof.] And we do declare that this our valuation is co witness &c.

The Schedule above referred to.

[*Here describe the lands as in Form No.* 25, *ante*, *App.*, 26

No. 29.—*Bond given by a Railway Company and Two Su enable the Company to enter on Lands before the Amount of pensation or Purchase money is agreed upon.* (8 & 9 *Vi s.* 85, 86.)

Know all men by these presents, that we the —— Railway C incorporated by an act of Parliament intituled "The —— Rai 184—," and A. B., of &c., and C. D., of &c., are held and firm to E. F. [*the owner*] of &c., in the sum of £——, of lawfu of Great Britain and Ireland, to be paid to the said [*owner*] or h attorney, executors, administrators, or assigns, for which paymen truly be made, we the said company bind ourselves and our succes

(*a*) If the valuation be made by the surveyor appointed by two justices, this precedent may be easily adapted, by inserting the recitals.

we the said A. B. and C. D. bind ourselves, and each of us, and the heirs, executors, and administrators of ourselves, and each of us, firmly by these presents, sealed with the common seal of us the said company, and with the respective seals of us the said A. B. and C. D. Dated this —— day of ——, in the year of our Lord, 184—.

Whereas, by virtue of the above-mentioned act of Parliament, or of the act or acts of Parliament incorporated therewith, the above-bounden railway company are authorised to purchase and take for the purposes of the said railway, the lands described or referred to in the schedule hereunder written, of which the above-named E. F. is the owner or reputed owner. And whereas notice in writing, bearing date on or about the —— day of ——, was duly given to the said E. F. [*Here shortly recite the notice given by the Company to the owner*] And whereas the said E. F., on or about the —— day of —— last, made his claim in writing, whereby he demanded the sum of £—— for the purchase by the company, in fee simple in possession, of the said lands, and as compensation to be made for the damage that would be sustained by him by reason of the making of the said railway. And whereas the said company disputed the said claim, and they have requested the said E. F. to abate the same, which he has declined to do, and has refused to treat further with the said company respecting the said premises: And whereas [*here recite any steps which may have been taken for the purpose of determining, by arbitration or otherwise, the amount of the compensation*] And whereas the said company are desirous of entering upon and using the said lands before the purchase-money or compensation to be paid by them in respect of the same has been agreed upon or settled according to law: Wherefore, in compliance with and obedience to the act or acts of Parliament above mentioned, the said company, on the ——day of —— last, paid the sum of £——, being the full amount claimed by the said E. F. as aforesaid, into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Chancery, to his account there, to the credit of the said E. F., and subject to the control and disposition of the said Court, as appears by the receipt in writing of the cashier of the said Bank. Now, therefore, the condition of the above-written bond is such, that, if the above-bounden company, or their successors, shall hereafter well and truly pay or cause to be paid unto the said E. F., his heirs, executors, or administrators, or deposit in the Bank of England for the benefit of the parties interested in the said lands, as the case may require, under the provisions contained in the said act or acts of Parliament above mentioned, all such purchase-money or compensation as may, in manner in the same act or acts provided, be determined to be payable by the above-bounden company or their successors in respect of the same, together with interest on such purchase-money or compensation, at the rate of 5*l.* per cent. per annum, from the time of the entry of the above-bounden company upon the said lands until such purchase-money or compensation shall be paid to the said E. F., his heirs, executors, or administrators, or be deposited in the Bank for the benefit of the parties interested in the said lands, as the case may require, as aforesaid; then the above-written bond or obligation shall be void, and of no effect, otherwise the same shall be and remain in full force and virtue.

Sealed with the common seal of the said Company, and sealed and delivered by the said A. B. and C. D. in the presence of }

The Schedule above referred to.

[*Here describe the lands as in Form No.* 25, *ante*, *App.*, 266.]

No. 30.—Award under the Lands Clauses Consolidation Act, m by an Umpire appointed by the Commissioners of Railways (App. (8 & 9 *Vict. c.* 18, *ss.* 25 *to* 37.)

To all to whom these presents shall come, I A. B., of —— Str London, Surveyor, send greeting:

Whereas, under and by virtue of a certain act of Parliament intituled [*in the title of the special act*], and of certain acts of Parliament incorpor therewith, a certain railway company was incorporated and authorised to m and maintain a railway from —— in the county of ——, to —— in the co of ——, and to purchase and take certain lands which were requisite for purposes of the said undertaking. And whereas, under the powers and pr sions contained in the said acts, or some or one of them, the said comp were authorised to purchase and take for the purposes of the said undertak the lands hereinafter particularly mentioned in the schedule hereunder writ and described on the plan hereto annexed, and colored green on the plan. And whereas C. D. and E. F., of &c., were entitled or claimed to entitled to sell and convey and release the said lands to the said comp under the powers and provisions contained in the said acts, some or on them. And whereas, on or about the —— day of ——, A. D. 18—, n in writing was duly given to the said C. D. and E. F., as being the ow or reputed owners of the said lands, by the said Company according to provisions contained in the said acts, some or one of them, that the above-m tioned lands were required to be taken and used for the purposes of the railway, and that the said company were willing to treat for the purcha the respective interests of them the said C. D. and E. F. therein, and the compensation to be made to them for the damage that might be susta by them by reason of the execution of the said railway works; and in and the said notice the said company required the said C. D. and E. F. to del a statement in writing of the particulars of their respective estates and in ests in the said lands, and of the claims made by them respectively in res thereof. And whereas, in pursuance of the said last-mentioned notice, the C. D. and E. F., on or about the —— day of ——, 184—, by a statemen writing under their hands, informed the said company, that they the C. D. and E. F. were seised and possessed to their own use and benefit of estate in fee simple in the said lands, and that they claimed the sum of £— as compensation for their estate and interest in such lands, and for the dam they might sustain by reason of the execution of the works authorised to be cuted by the said railway acts; and they the said C. D. and E. F. (the said co pany not having then issued their warrant to the sheriff to summon a jury respect of the said lands) also signified their desire to the said company have the said question of compensation and damage settled by arbitrati conformably to the direction of the said hereinbefore-mentioned acts, some one of them. And whereas they the said C. D. and E. F. and the said co pany, did not agree and could not agree, as to the amount of compensat to be paid as aforesaid, neither did they the said company offer any s of money to the said C. D. and E. F., as and for such compensation aforesaid (*b*). And whereas they the said C. D. and E. F. and the s company did not concur in the appointment of a single arbitrator, wh

(*a*) This form may easily be adapted to an award made by a single arbitrator, or by two arbitrators appointed under sect. 25, or by an umpire appointed by the two arbitrators under sect. 27. It will be prudent in each case, to state every fact which is necessary to shew jurisdiction.

(*b*) If a sum of money has b offered by the Company, the amo should be stated, inasmuch as liability to bear the costs attending arbitration may depend upon this c cumstance. See 8 Vict. c. 18, s. ante, App., 125.

upon the said railway company, in pursuance of the provisions contained in the said acts, some or one of them, duly nominated and appointed, in writing under the hands of two of the directors of the said company, H. I. of ——, land surveyor, to be an arbitrator to whom the question of such compensation as aforesaid should be referred, and requested the said C. D. and E. F. also to appoint an arbitrator. And whereas the said C. D. and E. F., in pursuance of the provisions contained in the said acts, some or one of them, and of the said request so made as aforesaid, duly nominated and appointed, by writing under their hands, K. L. of ——, land surveyor, as the other arbitrator to whom the question of such compensation as aforesaid should be referred. And whereas the said arbitrators, before they entered into the consideration of the matters so referred to them as aforesaid, duly made and subscribed, in the presence of a justice duly authorised in that behalf, the declaration required by the said acts, some or one of them. And whereas the said arbitrators entered upon the matters so referred to them as aforesaid, but did not, in pursuance of the said acts, some or one of them, nominate and appoint an umpire to decide on any matters on which they might differ, or which were referred to them as aforesaid, but on the contrary they the said arbitrators altogether refused to appoint an umpire within the time prescribed in the said acts, some or one of them, whereupon the said railway company, on or about the —— day of ——, duly made application in writing to the Right Honourable and Honourable the Commissioners of Railways, requesting them to appoint an umpire, in pursuance of the Lands Clauses Consolidation Act, 1845, (being one of the said acts incorporated with the said act intituled [*here state the title of the special act*]), and the said commissioners thereupon, in pursuance of the said request, and of the provisions contained in the said Lands Clauses Consolidation Act, 1845, by writing under their seal of office, and signed by —— of such commissioners, duly appointed me, the before-mentioned A. B., to be the umpire in the matter of the said arbitration. And whereas the said arbitrators, by reason of a difference between them, failed to make their award within twenty-one days after the day on which the last of the said arbitrators was appointed, and no extended time was appointed by them for the purpose of making their award, whereby the matters referred to the said arbitrators as aforesaid, and on which they so differed, duly came before me, as umpire: Now know ye that I the said A. B., having taken upon me the burthen of making the said award, and having, before taking into consideration any of the matters referred to me, duly made and subscribed, in the presence of a justice duly authorised in that behalf, the declaration required by the said acts, some or one of them, and which said declaration is hereunto annexed; and having been attended by the said arbitrators, and by the said parties and their witnesses, and having also viewed the said lands, and having also in making this my award regarded not only the value of the land to be purchased or taken, as aforesaid, by the said company from the said C. D. and E. F., but also the damage to be sustained by them by reason of the severing the said lands taken, from the other lands of the said C. D. and E. F., or otherwise injuriously affecting such other lands by the exercise by the said company, of the powers contained in the said acts, or either of them; do make this my award in writing concerning the premises, in manner and form following, that is to say, I do award, decide, order, and determine that the said company shall pay the sum of £—— for the absolute purchase of the fee simple in possession, free from incumbrances (save and except the land-tax and tithe commutation rent-charge), of all those pieces or parcels of land particularly mentioned and described in the said schedule hereunder written, and also delineated in the said plan hereunto annexed, and numbered respectively 2, 3, 4, 6, &c. to 18, on the said plan, and colored green; and also for the purchase of all and every the estate, right, share, interest, or charge of them the said C. D. and E. F., and each of them, in, upon, or affecting the said lands, or any part thereof, or which they the said C. D. and E. F., or either of them, are or is by the said acts, any or either of them,

enabled to sell, convey, or release; and also as and for compensa
damage sustained by the said C. D. and E. F., by reason of the
the said lands hereinbefore described, from the other lands of the
and E. F., or otherwise injuriously affecting such other lands.

And I the said A. B., in pursuance of the powers contained
acts, some or one of them, do hereby declare that I have settled
the said C. D. and E. F. incident to this arbitration at the sum
and the costs of and incident to my umpirage and award at the sum
which said sums are to be respectively paid according to the prov
tained in the said act, intituled The Lands Clauses Consolidation
As witness my hand this —— day of ——, in the year of our Lor

The Schedule above referred to.

[*Here describe the lands as in Form No.* 25, *ante, App.*, 2

ORDERS AND RESOLUTIONS IN THE COMMONS, 1847 (*a*).

I. Regulations for the Deposit of Petitions in the Private Bill Office, and for determining the Order in which they will be heard by the Examiners.

1. *Deposit of Petitions in the Private Bill Office.*

1. In order to facilitate the arrangement of the petitions, and the subsequent hearing thereof by the examiners, in such order as may be most convenient to the parties and their agents, a register will be kept in the private bill office, with blank lines numbered consecutively from 1 to 500; and every agent will be allowed to cause the petitions produced by him to be entered, respectively, on such of the lines, not then having any petition entered thereon, as he shall think fit; and if he shall not prescribe any order for the entry of such petitions, they will be entered in the order in which they are deposited upon the earliest consecutive lines then remaining unoccupied.

2. When two or more agents shall appear in the private bill office, at the same time, for the purpose of depositing petitions, unless they shall otherwise agree, their names will be placed in a ballot-glass, and the agents will have priority respectively in the order in which their names shall be drawn; each in his turn being entitled to deposit all the petitions offered by him at that time, and to select such numbers for them as he shall think proper.

3. On Friday the 1st, and Saturday the 2nd days of January, 1847, between the hours of twelve and three, agents will be allowed to exchange by agreement the numbers originally assigned to their petitions. They will, at the same time, be at liberty to transfer to other numbers in the register being then unoccupied, any of the petitions which may have been deposited by them; and their priority

(*a*) See Notices issued in the House of Lords in Session 1847, ante, 33, in the text.

in the exercise of this right will be determined by ballot, if nec
as in the original deposit of petitions (see No. 2).

4. Whenever two or more petitions, in respect of which th
witnesses are intended to be examined, shall occupy adjoining
bers in the register, the agent or agents for the same may ca
of them, not exceeding five in number, to be marked with a b
and regard will be had thereto in determining the days on whi
petitions shall be set down for hearing, and the examiner by
they will be heard.

5. On or after the 2nd of January, a numerical list will b
out in the private bill office, in which the petitions will be nu
consecutively, from one to the highest number, according to th
in which they shall have been finally entered in the register
list will be called the "General List of Petitions," and the p
will be set down for hearing before the examiners, in the o
which they shall stand therein.

2. *The Hearing of Petitions by the Examiners.*

6. Not less than seven clear days' notice will be given, in t
vate bill office, of the day appointed for the examination of e
tition; and the day so appointed will be written against the
petitions upon a printed copy of the "General List of Pet
which will be kept in the private bill office for that purpose.

7. So soon as the time allowed for depositing a memoria
plaining of non-compliance with the standing orders in the
any such petitions shall have expired, the word "unopposed
be written in such printed list, against each petition in res
which no such memorial shall have been deposited; and on
lowing day, lists, shewing the petitions allotted to each examin
be set up in the lobby of the house, in the private bill office, a
the committee-rooms in which the examiners are appointed t

8. Petitions will be heard in the order in which they stan
daily lists, precedence being given as much as possible to un
petitions; and in case any petitions shall not be disposed of
days on which they may be first appointed to be heard, they
entered in the list of the following day, before the opposed p
appointed for that day; unless the examiners shall otherwise
or postpone the same.

9. In order to expedite the business of each day, petitions a

ed to be heard by one of the examiners, will be transferred to the other, from time to time, whenever it may seem advisable to the examiners to direct such transfer.

CHARLES SHAW LEFEVRE, Speaker.

II. COMMITTEE ON STANDING ORDERS FOR 1847.

By a resolution of the House, 20th January, 1847, this committee was nominated :—

Sir William Heathcote, Mr. Ord, Lord Dalmeny, Sir Robert Fergusson, Mr. Wilson Patton, Sir John Yarde Buller, Mr. Aglionby, Captain Jones, Mr. Home Drummond, Mr. Wrightson, and Mr. Sotheron.

III. RESOLUTIONS AS TO RAILWAY BILLS.

On the 22nd January, 1847, on the motion of Mr. Strutt, Resolved, That, after Tuesday next, the House will not receive any petition for a private bill unless it be presented within three clear days after it shall have been indorsed by one of the examiners.

Resolved, That, on and after Tuesday next, all memorials complaining of non-compliance with the standing orders be deposited in the private bill office before six of the clock in the evening of any day on which the House shall sit, and before two of the clock of any day on which the House shall not sit; and that two copies of every such memorial be deposited for the use of the examiners, before twelve o'clock on the following day.

Resolved, That all memorials complaining of non-compliance with the standing orders in reference to petitions which stand in the "General List of Petitions" after No. 250, be deposited on or before Saturday the 6th day of February next.

On the 3rd of February, 1847, on the motion of Mr. Strutt, Resolved:—

1. That a committee of five members be appointed, to be called "The Classification Committee of Railway Bills, to consist of the following members, Mr. Wilson Patten, Lord Courtenay, Sir Robert Fergusson, Sir John Pakington, and Lord Dalmeny;" and that three be the quorum of such committee.

2. That copies of all petitions for railway bills presented to the House be laid before the said committee.

3. That the Committee of Classi
railway bills, which, in their opini
mit to the same committee.

4. That, as soon as the Committe
mined what railway bills are to
report the same to the House; an
said bills shall be presented to the
meeting of the committee thereon.

5. That there be no more than s
reading of any railway bill and the
special order of the House.

6. That the breviate of every rail
of the House, and be printed and d
second reading.

7. That such railway bills as sha
fore the House shall agree to these
time within seven clear days therea

8. That such of the standing ord
the committees on private bills, an
be suspended so far as regards railw
the present session.

9. That committees on railway b
Parliament, shall be composed of a
appointed by the Committee of Sel

10. That each member of a com
shall, before he be entitled to att
sign a declaration that his constitu
that he himself has no personal in
ferred to him; and no such commit
the whole of the members thereof s

11. That the promoters of a rai
into the committee on the bill or
Selection shall, subject to the orde
between the second reading of every
committee thereupon, think prop
Classification Committee shall have

12. That the Committee of Selec
less than fourteen days' notice of th
sary for him to be in attendance,
quired, on a railway bill committee

13. That the Committee of Selection shall give each member a sufficient notice of his appointment as a member of a committee on a railway bill, and shall transmit to him a copy of the 12th resolution, and a blank form of the declaration therein required, with a request that he will forthwith return it to them properly filled up and signed.

14. That if the Committee of Selection shall not, within due time receive from each such member the aforesaid declaration, or an excuse which they shall deem sufficient, they shall report to the House the name of such defaulting member.

15. That the Committee of Selection shall have the power of substituting, at any time before the first meeting of a committee, another member for a member whom they shall deem it proper to excuse from serving on that committee.

16. That power be given to the Committee of Selection to send for persons, papers, and records, in the execution of the duties imposed on them by the foregoing resolutions.

17. That no member of a committee shall absent himself from his duties on such committee, unless in case of sickness or by leave of the House.

18. That all questions before committees on railway groups or bills shall be decided by a majority of voices, including the voice of the chairman; and that, whenever the voices shall be equal, the chairman shall have a second or casting vote.

19. That, if the chairman shall be absent from the committee, the member next in rotation on the list, who shall be present, shall act as chairman.

20. That committees shall be allowed to proceed so long as three members shall be present, but not with a less number, unless by special leave of the House.

21. That if, on any day within one hour after the time appointed for the meeting of a committee, three members shall not be present, the committee shall be adjourned to the next day on which the House shall sit, and then shall meet at the hour on which such committee would have sat had no such adjournment taken place.

22. That, in the case of a member not being present within one hour after the time appointed for the meeting of the committee, or of any member absenting himself from his duties on such committee, such member shall be reported to the House at its next sitting.

23. That each committee shall be appointed to meet on each day

of its sitting not later than 12 o'clock, unless by the regular vote o the committee.

24. That committees on railway bills have leave to sit in the pr sent session, notwithstanding any adjournment of the House, if th committee shall so think fit.

25. That it be an instruction to all committees upon private bills n to hear parties on any petition hereafter referred to them, which sha not be prepared and signed in strict conformity with the rules an orders of this House.

26. That all select committees on railway groups or bills be em powered to refer, if they shall so think fit, to the Chairman of Wa and Means, together with the members ordered to prepare and bri in each such bill, any unopposed railway bill submitted for the consideration; and that such bills be severally dealt with by the sa chairman, and those members respectively acting with him, as oth unopposed bills are to be dealt with.

27. That the following clause be inserted in all railway bills pa ing through this House :—

"And be it further enacted, that nothing herein contained shall deemed or construed to exempt the railway by this or the said r cited acts authorised to be made from the provisions of any gene act relating to such acts, or of any general act relating to railwa now in force, or which may hereafter pass during this or any futu session of Parliament, or from any future revision and alteratio under the authority of Parliament, of the *maximum* rates of fares a charges authorised by this act."

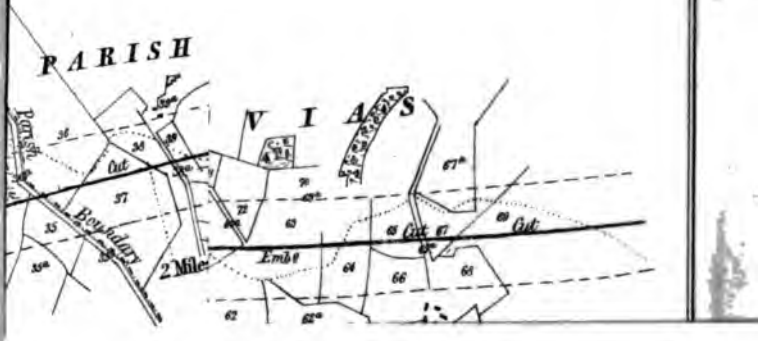
IV. Standing Order No. 13, as to Evidence repealed.

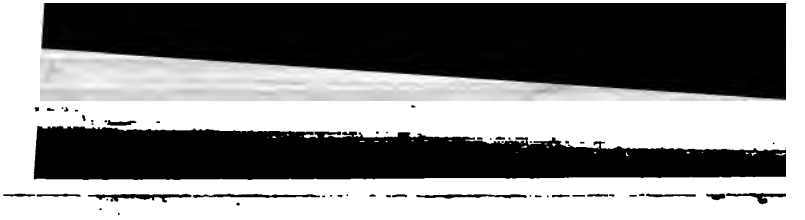
February 4th, 1847, ordered, that Standing Order No. 13, (ant 33 in the text) be repealed; and it was further

Ordered, That, in the case of any application for a private b relating to Scotland, the examiner may admit proof of the complian with the standing orders of the House, on the production of affidavi sworn before any sheriff-depute, or his substitute there, unless th examiner shall require further evidence. Votes, 1847, page 139.

he Stan 1847.

FIG. 1





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